

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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5 In the Matter of:

6 LEHMAN BROTHERS HOLDINGS INC., Case No. 08-13555-scc

7 Debtor.

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10 United States Bankruptcy Court

11 One Bowling Green

12 New York, New York 10004-1408

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14 November 28, 2017

15 10:13 AM

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23 B E F O R E:

24 HON. SHELLEY C. CHAPMAN

25 U.S. BANKRUPTCY JUDGE

1 IN RE: RMBS Claims Estimation Trial

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25 Transcribed by: Dawn South and Sherri L. Breach

1 A P P E A R A N C E S :

2 WILKIE FARR & GALLAGHER LLP

3 Attorneys for the Plan Administrator

4 787 Seventh Avenue

5 New York, NY 10019-6099

6

7 BY: TODD G. COSENZA, ESQ.

8 BENJAMIN P. MCCALLEN, ESQ.

9 JOSEPH G. DAVIS, ESQ.

10

11 HOLWELL SHUSTER & GOLDBERG LLP

12 Attorneys for the Trustees

13 750 Seventh Avenue, 26th Floor

14 New York, NY 10019

15

16 BY: MICHAEL S. SHUSTER, ESQ.

17 DWIGHT A. HEALY, ESQ.

18 NEIL R. LIEBERMAN, ESQ.

19 DANIEL P. GOLDBERG, ESQ.

20

21

22

23

24

25

1 ROLLIN BRASWELL FISHER LLC/PARTNER

2 8350 E. Crescent Parkway

3 Suite 100

4 Greenwood Village, CO 80111

5

6 BY: MICHAEL ROLLIN, ESQ.

7 MARTIZA DOMINGUEZ BRASWELL, ESQ.

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1 P R O C E E D I N G S

2 THE COURT: Please have a seat. Sorry for the
3 delay.

4 All right, day two. What are we doing first?

5 MR. SHUSTER: We're crossing Mr. Trumpp.

6 THE COURT: Sounds right. Mr. Trumpp, please come
7 back. Good morning, welcome back. You're still under oath
8 of course. If you need something there's some water.

9 THE WITNESS: Okay.

10 ZACHARY TRUMPP, WITNESS, PREVIOUSLY SWORN

11 (Pause)

12 MR. SHUSTER: May I?

13 THE COURT: Yes.

14 MR. SHUSTER: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. SHUSTER:

17 Q Good morning, Mr. Trumpp.

18 A Good morning.

19 Q Mr. Trumpp, you mentioned that Lehman and Aurora
20 pursued downstream claims of their own, put-back claims and
21 repurchase claims?

22 A Yes, I did.

23 Q Did they always do so in good faith, sir, and with a
24 good faith belief that those claims were valid?

25 A I believe so, yes.

1 Q Did they always succeed on those claims?

2 A No, we did not.

3 Q Now, you mentioned that you asserted claims against
4 Lehman's own affiliates?

5 A Yes.

6 MR. BRASWELL: Objection, Your Honor.

7 THE COURT: Yes.

8 MS. BRASWELL: Before we get too far down this
9 road we object to the introduction of the prior testimony of
10 prior cases, we don't think they're relevant.

11 Mr. Cosenza has prepared on a couple of legal
12 issues that we anticipated coming up today, this is one of
13 them, if this is a good time to talk through it Mr. Cosenza
14 will address that.

15 THE COURT: Okay. First let's give out those
16 books, okay? All three of those books?

17 UNIDENTIFIED SPEAKER: I don't --

18 THE COURT: I think there's enough room in there
19 for all three of those books.

20 UNIDENTIFIED SPEAKER: One at a time.

21 THE COURT: So --

22 MR. SHUSTER: And he doesn't need any yet, but the
23 first binder.

24 THE COURT: Okay. All right. And, Mr. Trumpp,
25 I'm going to ask you to take a stroll down the hall, all

1 right? And someone will come and retrieve you when we're
2 ready. All right? Thank you.

3 (Witness leaves room)

4 THE COURT: Mr. Cosenza, could I ask you to close
5 the open door?

6 MR. COSENZA: Sure.

7 THE COURT: Okay. So --

8 MR. COSENZA: So, can I --

9 THE COURT: -- what's going on?

10 MR. COSENZA: Yeah. So, Your Honor, we object. I
11 guess we can take it question by question, but we object --

12 THE COURT: So take me back. Mr. Shuster, what
13 was the question that you asked before the objection was
14 made?

15 MR. SHUSTER: The question that I asked I think
16 was whether Lehman pursued claims against its own
17 affiliates.

18 I wasn't asking that question, but it was a
19 question and answer from yesterday, and I was asking that
20 question just to get into what Lehman knew about its own bad
21 loans, not for setting up -- laying a predicate for
22 introducing these admissions documents. But I'm going to
23 want to examine the witness on various submissions that
24 Aurora and LBHI have made, judicial submissions,
25 declarations, and letters that bear on the issues here and

1 on many of the matters that Mr. Trumpp testified on
2 yesterday, including types of evidence, sufficiency of
3 evidence, one piece of evidence versus two pieces of
4 evidence, what the applicable and the E standard is. The
5 experience that he says he drew upon in which he testified
6 about liberally, that he drew upon while at Aurora and
7 Lehman in contract administration and loss management --

8 THE COURT: Okay.

9 MR. SHUSTER: -- these documents all go to those
10 issues.

11 THE COURT: I have the general idea. Mr. Cosenza?

12 MR. COSENZA: So, Your Honor, several -- there's
13 several basis for our objection.

14 First, under 402 I don't believe the statements
15 are relevant.

16 There's many cases in the Second Circuit that talk
17 about a mini-trial within a trial, and when you're trying to
18 admit Mr. Trumpp's statements or other Lehman statements
19 from the downstream litigation in essence all those
20 statements will have to be put into context of what happened
21 in those cases.

22 As we've gone -- you know, during my opening we've
23 heard from witnesses, every loan file is unique, and to try
24 to draw from a one paragraph or one sentence from an
25 affidavit or declaration in a downstream litigation without

1 laying a proper foundation and without looking through the
2 entire litigation file to understand different parties,
3 different standards, again, the securitization issue versus
4 the whole loan issue that I previewed in my opening.

5 And Your Honor, you know, this is something, you
6 know, just to be very candid with you, if this was a jury
7 trial Second Circuit case law is totally on point here,
8 there's *Arlio v. Lively*, I believe it's 47 46 -- F.3d 46,
9 where Judge McLaughlin looked at this issue, where a
10 district court judge had allowed in a prior arbitration
11 testimony and a decision from (indiscernible - 6:46) between
12 the same parties, and he said, you know, when you put that
13 information before a jury it doesn't make any sense, you
14 have the witnesses there, you should be able to sort of
15 examine them and ask them questions.

16 To try to get into evidence prior statements or
17 prior results from other litigations without having the full
18 context of what happened in those cases you then end up with
19 a mini-trial within the trial to try to understand what
20 happened in those cases.

21 For many reasons these loans are different because
22 they're securitized, the parties are different, the
23 standards that were applied in some of those cases was
24 different, the types of evidence that Mr. Trumpf relied on
25 in those cases in terms of downstream it varied depending on

1 each case, but typically there was a much more robust
2 investigation analysis done by Lehman in terms of pursuing
3 those claims downstream.

4 So in order for, you know, those statements to
5 really be put into context we'd have to look at the entire
6 litigation and look at all the various statements that were
7 made.

8 I would note that there's also Judge McLaughlin
9 decision in Abu Dhabi v. Morgan Stanley that raises the same
10 sort of point where you try to put in evidence and testimony
11 from prior cases, and she said, you know, you really have to
12 look at the people who are here before you, understand the
13 relevance.

14 Again, that was a jury trial so there was a clear
15 prejudice to putting that information before the jury, here
16 we have a bench trial so I think it's a slightly different
17 approach, but if this was a jury trial this evidence would
18 not get in without having to go through the entirety of the
19 file, and again, that would create a mini-trial. And given
20 where we are in this --

21 THE COURT: So you're not getting to the issue of
22 the admission issue, you say it is out on the basis of
23 relevance.

24 MR. COSENZA: On relevance as well as the
25 prejudice to Lehman without having a proper foundation for

1 the entirety of the case. And I think if you look at the
2 Lively decision I mentioned from Judge McLaughlin he
3 reversed the district court judge in that case both on
4 relevance and on prejudice saying the relevance here is you
5 have the witnesses, you should ask them questions, looking
6 at snapshots of little snippets from depositions and what
7 the determine medication was by an arbitrator creates all
8 sorts of confusion. Every case is sort of different. And
9 those are the same parties, there's different legal claims
10 in the two proceedings, and he said putting that information
11 before the court from the prior proceeding creates
12 confusion, it's not relevant, and it also creates a shown
13 likelihood for prejudice.

14 Again, that was a jury trial --

15 THE COURT: Right.

16 MR. COSENZA: -- so that was -- you know, that's
17 the one distinguishing factor here, but from our perspective
18 if you are going to take one snippet from an affidavit from
19 either Mr. Trumpp or another Lehman employee it really is of
20 no relevance here and -- without putting the full context if
21 Mr. Shuster is going to go through the entire litigation
22 file for that particular case, which I think would be well
23 beyond the scope and purview of this estimation proceeding,
24 because I think it would take hours upon hours to do that,
25 we think it's totally improper.

1 THE COURT: Okay. Mr. Shuster?

2 MR. SHUSTER: Well I'll say -- I'll start again
3 where I was, which is Lehman first of all opened the door to
4 all of this because Mr. Trumpp testified about his
5 experience at Aurora, his experience at Lehman, how he drew
6 on that experience in establishing the protocol and the
7 standards that they applied, the evidentiary standards they
8 applied, and what surprised him and what didn't surprise
9 him, and what the MAE standard is. Those are all matters
10 that are addressed in these documents. They are filed by
11 Aurora and LBHI, they bear directly on the matters that
12 Mr. Trumpp testified about.

13 THE COURT: But are you going to go through -- I
14 accept that, I think that's fair. But are you going -- with
15 respect to the documents are you going to go through and lay
16 a foundation with him on every single document that he had
17 some knowledge and/or participation in the creation of the
18 document? Because we can't charge him with knowledge of
19 every single thing that Aurora or LBHI did.

20 MR. SHUSTER: That -- well he -- they're party
21 admissions and he really is here testifying on behalf of the
22 plan administrator, they've designated him as the plan
23 administrator rep, and yesterday he testified quite
24 liberally with a voice of the plan administrator not only --

25 THE COURT: Yes.

1 MR. SHUSTER: -- based on sort of necessarily
2 here's what I said, here's what I did, it was almost all
3 that said most of these declarations that I propose to use,
4 with one or two exceptions, are his.

5 In those declarations he recites his authority to
6 make the statements that he makes. Then those declarations
7 -- and those declarations have language about material and
8 adverse effect and certain other matters.

9 The declarations attach demand letters made by
10 Aurora in the ordinary course of business. Some of them are
11 Mr. Trump's, some of them are demand letters --

12 THE COURT: When you're talking about Aurora are
13 you now talking about pre-2008?

14 MR. SHUSTER: I'm talking mostly -- I have to go
15 and look at the date so I don't want to represent either
16 way, but there's a lot of --

17 THE COURT: And the reason I'm asking is because
18 isn't it a different question as to whether or not it's a
19 party admission if it's pre-2008?

20 MR. SHUSTER: Well there might be, but there are
21 recitations in the declarations that make clear that the
22 statements are being made on behalf of Lehman. Aurora is
23 the authorized agent servicer and master servicer for LBB
24 and LBHI, it is authorized and directed by LBB and LBHI to
25 enforce any obligations owed to them, it's the parent

1 company. So it's --

2 THE COURT: Right. But I'm asking a different
3 question.

4 MR. SHUSTER: In addition I think principally --

5 THE COURT: It's a pre-2008, right? You can tell
6 me, I think there's case law on this.

7 MR. SHUSTER: I think it's all post.

8 THE COURT: If it's all post then it's a different
9 issue. To the extent that their pre I think that you have
10 an issue with it being a party admission because it's a
11 different party once there's a bankruptcy filing. I'm sure
12 you can give me case citations to the contrary --

13 MR. SHUSTER: Yes.

14 THE COURT: -- but that's what I believe is the
15 better answer.

16 I hear you with respect to the door having been
17 opened, I don't know how we deal with the trial within a
18 trial kind of -- you know, drive by shooting aspect of you
19 showing him documents, kind of having a reading of snippets
20 of the documents and then you keep moving on. So --

21 MR. SHUSTER: Okay. The documents have been on --
22 I think they've been on our exhibit list, regardless I've
23 covered many of these documents with him in his deposition
24 months ago. They're going to have the documents. They can
25 redirect him on the documents. The documents in substantial

1 part consist of his own declarations and demand letters that
2 are expressly referenced in the declarations that are
3 submitted on behalf of -- yeah, you know, for -- and I'm not
4 -- you know, the demand letters say here's -- you know, it's
5 -- the demand letters have narratives that look virtually
6 identical to the narratives that the trustees put forward
7 here. You know, the borrower represented his or her income
8 to be X, we looked at a tax return, the tax return suggests
9 that the borrower's income is Y, that's a misrepresentation
10 of an applicable breach.

11 I'm not really trying to establish that that
12 borrower actually misrepresented his or her income debt or
13 occupancy, I'm just trying to establish that that was said
14 and that's the evidence that was put forward, and you know,
15 other things were said about what's required to refute the
16 evidence and so forth.

17 MR. COSENZA: Your Honor --

18 THE COURT: Yes.

19 MR. COSENZA: -- I think that's the starting point
20 for the analysis and I think Mr. Shuster has sort of
21 highlighted the issue that we're most concerned about, is
22 you take a snippet from the demand letter or you take a
23 snippet one sentence from a default judgment affidavit, it
24 doesn't tell you the full story as to whether or not Lehman
25 succeeded on that claim, failed on that claim, whether or

1 not that evidence was sufficient.

2 I mean according to Mr. Shuster's theory if for
3 example Lehman relied on the bankruptcy filing and Lehman
4 lost that case solely relying on bankruptcy filings does
5 that mean their entire theory on the bankruptcy filings, you
6 know, fall away?

7 I'm just saying it highlights the confusion that
8 this is going to create and the fact that we're going to
9 have to go through the entirety of the file just to go
10 through this.

11 THE COURT: I have to say, Mr. Cosenza, I'm not
12 going to be confused. I think he's entitled to present him
13 with his prior statements in declarations. I'm not so sure
14 about other documents which he may or may not have seen. I
15 think you're going to have to lay a foundation on that. But
16 with respect to his own declarations I think that the
17 trustees are entitled to explore that with the witness and
18 you can take it up on direct -- on redirect.

19 I don't intend to be confused. I can separate the
20 two things in my mind, and frankly that's, you know, where
21 my questions would immediately go to, but I think they're
22 entitled to examine the witness in that regard given how he
23 testified as to his experience and qualifications to do what
24 he's been doing on behalf of the plan administrator.

25 MR. COSENZA: Okay.

1 THE COURT: So, you know, this is a time trial,
2 you're going to have to do what you're going to have to do
3 and that's what we're going to do. All right?

4 MR. COSENZA: Sure, Your Honor. Just one other
5 issue.

6 THE COURT: Yeah.

7 MR. COSENZA: Because I think it may come up later
8 on, I'm not sure if we should cover it now or when it comes
9 up, but there are also a number of documents and emails that
10 were shown to Mr. Trump at his deposition where he had no
11 firsthand knowledge of documents from Lehman in 2005, 2006,
12 he's not a recipient, he claimed he didn't know.

13 THE COURT: Sure. But that's what I mean about if
14 there are going to be any documents other than his
15 declaration there would have to be a foundation laid --

16 MR. COSENZA: Okay.

17 THE COURT: -- that he's ever seen them. They're
18 not going to come in from -- I believe they're not just
19 going to come in as admissions, so.

20 MR. COSENZA: Okay.

21 THE COURT: All right?

22 MR. COSENZA: Thank you, Your Honor.

23 THE COURT: So if somebody could retrieve
24 Mr. Trump that would be great.

25 (Pause)

1 THE COURT: While we're waiting for Mr. Trump to
2 rejoin us I just also wanted to tell you, Mr. Shuster, I
3 need to take a conference call at noon for about 15 minutes,
4 so if that could be a break --

5 MR. SHUSTER: Oh, sure.

6 THE COURT: -- that would be great, and then we
7 can continue until the lunch hour.

8 MR. SHUSTER: Thank you, Your Honor.

9 (Witness re-enters room)

10 THE COURT: Mr. Trump, please rejoin us.

11 Mr. Trump, given your experience you probably
12 don't need me to say this, but I'm going to say it anyway,
13 when these objections arise and you're excused or you're not
14 excused the objection and the colloquy between counsel and
15 the Court have no bearing whatsoever on you, on anything
16 you've said, or on anything you haven't said, it's purely
17 lawyer stuff and I just wouldn't want you to think it has
18 any reflection on you in any way.

19 THE WITNESS: I appreciate that. Thank you.

20 THE COURT: The other thing that I wanted to
21 mention, which I should have mentioned yesterday, is that
22 you may notice from time to time I'm either writing or I'm
23 typing. I can't explain to you why I do one or the other,
24 it's all about this case, I'm not doing any cyber Monday
25 shopping online. I just want you to understand that you

1 have my full attention even when I'm writing or even when
2 I'm typing.

3 MR. SHUSTER: Thank you, Your Honor.

4 THE COURT: All right?

5 THE WITNESS: Understood, thank you.

6 THE COURT: Okay. Go ahead, Mr. Shuster.

7 BY MR. SHUSTER:

8 Q So the --

9 THE COURT: These binders are coming back. I
10 would suggest you put them over on the -- the binder that's
11 in with you now was from yesterday, why don't you evict that
12 binder and then these new binders you can stack up right
13 next to you.

14 MR. SHUSTER: I would give him one at a time and
15 then we can just --

16 THE COURT: I've been overruled by Mr. Shuster.

17 MR. SHUSTER: Sorry.

18 THE COURT: That's fine.

19 MR. SHUSTER: I didn't -- you know, it just seems
20 like a lot.

21 THE COURT: Whatever you say.

22 MR. SHUSTER: It seems like a lot is all.

23 THE COURT: Okay. But we need copies as well.

24 MR. SHUSTER: I have copies for the Court.

25 (Pause)

1 BY MR. SHUSTER:

2 Q There's been a request that you and I speak into the
3 mic, sir.

4 A I'll try and remember that.

5 Q Me too.

6 THE COURT: There are red tabs in mine too.

7 UNIDENTIFIED SPEAKER: On purpose.

8 THE COURT: On purpose. Okay. Just not trying to
9 appropriate your work product.

10 MR. SHUSTER: Make it a little easier to get
11 through it is all.

12 THE COURT: Thanks.

13 MR. SHUSTER: Okay.

14 THE COURT: All right. I think we're now ready.

15 MR. SHUSTER: Thank you, Your Honor.

16 BY MR. SHUSTER:

17 Q So the claims that Lehman asserted against its
18 affiliates were loan put-back or repurchase claims?

19 A Generally speaking, yes.

20 Q Okay. And those were claims coming out of Lehman
21 securitizations?

22 A Or in the case of BNC or Aurora -- in the case of BNC
23 with respect to their whole loan purchase and sale
24 agreements between BNC and LBHI.

25 Q So Lehman knew they were breaching loans in these

1 securitizations separate and apart from any notice it may
2 have received from the trustees?

3 A So I mentioned briefly yesterday loss management's
4 processes for reviewing loans in the securitizations, and we
5 had people reviewing loans, reviewing specific loans in
6 these securitizations, and if there were instances where we
7 found loans that we felt breached the representations and
8 warranties to that specific loan and that specific agreement
9 and that specific trust then we pursued a remedy.

10 Q Okay.

11 A So for those particular loans we were looking at
12 breaches of representations and warranties and we were
13 looking at the specific representations and warranties in
14 question. So it would depend whether there was knowledge by
15 Aurora as master servicer if we were putting a loan back
16 under that representation and warranty.

17 Q And Aurora had the special investigations unit that
18 CQ'd loans both pre and post securitization to determine if
19 there were among other things breaches of representations of
20 warranties on those loans; isn't that correct, sir?

21 A I recall that Aurora had a quality control process and
22 that there were people within that quality control
23 department that referred to themselves as special
24 investigations and they did reviews of loans, yes.

25 Q And they did reviews of loans using statistical

1 sampling, right?

2 A I'm not aware of all of the methods with which special
3 investigations chose to review their loans, I wasn't a part
4 of that group.

5 Q But that was one of the methods that they used, wasn't
6 it, Mr. Trump?

7 A I believe that that is one of the methods, yes.

8 Q And so when they were using statistical sampling to
9 identify loans to review for breach they did identify
10 certain loans to review -- that were breaching loans,
11 correct? I just want a yes or no whether they actual
12 identified breaching loans doing pre or post securitizations
13 reviews.

14 A Can you define for me what you mean by breaching loans?

15 Q A loan that breached a representation and warranty.

16 A So again --

17 Q Did they or didn't they, Mr. Trump? Either they did
18 or they didn't.

19 A So I would like to explain to you why I think there's a
20 difference between what special investigations did. So
21 special investigations --

22 Q Well hang on. When you say a difference between what
23 special investigations did I don't know what you're
24 referring to and it doesn't sound like it's going to be
25 responsive to my question.

1 My question for you quite simply, sir, is when they
2 used statistical sampling to select loans to review for
3 potential breaches of representations and warranties they
4 did in fact find such breaches in the regular course of
5 business; isn't that the case?

6 A So again, I wasn't part of special investigations at
7 Aurora. It is my understanding and belief that they
8 reviewed loans from a reunderwriting perspective and from a
9 quality control perspective, but I also am under the
10 understanding and belief -- but again, I wasn't part of that
11 group -- that they didn't review the loans relative to any
12 agreements. They didn't look at any potential defects
13 relative to the purchase and sale agreements at Aurora or
14 the purchase and sale agreements in these securitizations.

15 So they may have found defects, but I don't believe
16 they found breaches of representations and warranties
17 because they didn't have that agreement to compare it to.
18 But again, that's not my area of expertise.

19 Q Now, Mr. Trumpp, but you do know that in quality
20 control reviews Aurora did find breaching and defective
21 loans. You know that, right? That's something of which you
22 do have personal knowledge, sir?

23 A So as I've tried to clarify, quality control at Aurora,
24 which encompassed special investigations, it's my
25 understanding they did not review their defects against the

1 purchase and sale agreements that would have been
2 applicable. They were purely looking at it from a
3 reunderwriting perspective and assessing whether there were
4 defects.

5 So I don't believe they would have been looking at and
6 determining whether they were quote/unquote breaching loans,
7 to use your terms, in these securitizations.

8 Q When you say breaching loans, for example, loans that
9 breached representations and warranties and therefore would
10 have given rise to repurchase claims, right?

11 A Yes.

12 Q Okay. Let me show you, Mr. Trumpp, if I may TRX-769.
13 And I'm not sure if that's in one of the binders?

14 MS. BRASWELL: Objection, Your Honor. This is one
15 of the documents Mr. Cosenza referenced. Mr. Trumpp was
16 asked about this document in deposition, he said he didn't
17 have any knowledge of it, there's really no foundation or
18 basis for this line of questioning.

19 THE COURT: Okay. Well let's see if Mr. Shuster
20 can lay a foundation.

21 BY MR. SHUSTER:

22 Q So, Mr. --

23 A You're going to have to point me to the document.

24 THE COURT: Hold on a second. Ms. Braswell and
25 Mr. Shuster, could you come up for a second?

1 (Sidebar off the record)

2 BY MR. SHUSTER:

3 Q So you can see, Mr. Trump, that this document is
4 entitled risk review Aurora and BNC, February 2007, and it's
5 on Lehman Brothers -- on a Lehman Brothers PowerPoint
6 template. You see that, sir?

7 A Yes, I do.

8 Q You were at Aurora at this time?

9 A Yes, I was.

10 Q Would you have seen risk reviews at Aurora for Aurora
11 in this time period? This is -- you were at Aurora in 2005
12 to 2008, would you have seen risk reviews in the ordinary
13 course of your work, Mr. Trump?

14 A I don't recall seeing it and I don't believe I would
15 have seen these in the ordinary course of my work.

16 Q You would not have seen this document?

17 A That's correct.

18 Q Okay. I'm not going to -- for the moment I'm not going
19 to try to -- I'm not asking you to adopt it, but I want to
20 ask you a question about a couple of lines in the document
21 that go to the testimony you just gave, sir.

22 MS. BRASWELL: Objection, foundation.

23 THE COURT: Okay. You got to help me out,
24 Mr. Shuster. He has said that he's seen the document, why
25 are we going to use the document as a platform for

1 questions?

2 MR. SHUSTER: There's a reference in the document
3 to the sorts of quality control reviews that the witness
4 testified about a moment ago, and he testified that those
5 reviews were not done for purposes of determining whether
6 there were breaches of representations and warranties that
7 lead to repurchase claims. There are statements in here
8 that suggest otherwise. I just want to ask him about those
9 statements. There's two at the most that I will ask him
10 about.

11 THE COURT: Ms. Braswell?

12 MS. BRASWELL: Your Honor, he testified he wasn't
13 part of that group. He's also testified, as you pointed
14 out, that he hasn't seen this document, it's that same
15 testimony before.

16 If he wants to ask questions generally that's one
17 thing, but if he's asking directly off of the document that
18 Mr. Trumpp has already said he hasn't seen that's
19 objectionable.

20 THE COURT: All right. Mr. Shuster, I'm going to
21 give you a little leeway.

22 MR. SHUSTER: I'll keep it short and sweet.

23 THE COURT: Okay. Go ahead.

24 BY MR. SHUSTER:

25 Q So, Mr. Trumpp, permit me to direct your attention to

1 page 7 of 13 in TRX-769. You see under the heading Aurora
2 there, first there's Aurora contract admin received a
3 certain number of new claims. Contract admin was the group
4 you were in at this time?

5 A No, I was not.

6 Q Okay. And then the next sentence says the trading desk
7 has asked for an additional 477 loans from the LXS
8 securitization to be reviewed. LXS is a securitizations
9 show of Aurora Lehman, correct?

10 A Correct.

11 Q And many of the securitizations that are at issue here
12 are LXS securitizations; isn't that right?

13 A That is correct.

14 Q And then it goes on to say that this was -- will result
15 in even higher repurchase volume in March. Do you see that,
16 sir?

17 A No, I do not. Can you just point me --

18 Q It's the same sentence -- it's the same bullet point,
19 second bullet point under Aurora, second sentence,
20 Mr. Trumpp. Page 7 of 13.

21 A Thank you, I see it.

22 Q Okay. I'm wondering if that refreshes your
23 recollection at all that the quality control reviews that
24 were performed at Aurora were in fact done under
25 representations and warranties for purposes of determining

1 whether there could or would be repurchase claims?

2 MS. BRASWELL: Objection, foundation.

3 THE WITNESS: So --

4 THE COURT: You can keep going, Mr. Shuster.

5 THE WITNESS: In 2007 I was in loss management at
6 Aurora, which was working on behalf of the master servicer
7 and reviewing loans and their securitizations. There was
8 another department within Aurora, not in master servicing
9 called quality control, and they may have done additional
10 reviews during that period of time, I don't recall us in
11 loss management doing a review -- a specific review on LXS
12 securitization, so it very well could have been other parts
13 of Aurora, I don't know.

14 And as I stated earlier, generally speaking it's
15 my understanding quality control did not necessarily review
16 loans and compare those underwriting findings,
17 reunderwriting findings, whatever you want to call them, to
18 the securitization agreements. That was done elsewhere.

19 BY MR. SHUSTER:

20 Q Now, you testified yesterday, Mr. Trumpp, that a breach
21 rate of 50 percent seemed to you to be intuitively high.
22 You said that more than once yesterday, remember that?

23 A I do.

24 Q Okay. Let me just direct your attention -- this is the
25 last thing I'm going to ask you about in this document --

1 but it's on page 11 of the same document, Mr. Trumpp, and
2 it's five bullet points down. Do you see that? Are you
3 with me?

4 A I do.

5 Q So this is a reference to work that was done by special
6 investigations, and I think what you're telling us today is,
7 to the extent that special investigations performed breach
8 reviews that was something in which you did not participate
9 and about which you -- and something you know nothing about.
10 Is that fair?

11 A That is.

12 Q Okay. But you do see here that it does say that
13 special investigations completed the review of 240 LXS loans
14 which resulted in 50 percent of the loans containing
15 material misrepresentations. You see that?

16 A Yes.

17 Q Does that cause you in any way to reevaluate the
18 statement you made multiple times yesterday that a breach
19 rate of 50 percent seems intuitively high?

20 A No.

21 Q Okay. Now, it's also the case, isn't it not, Mr. -- is
22 it not, Mr. Pino, that the plan administrator -- Mr. Pino --
23 that's not the last time I'm going to do that, but I
24 apologize.

25 It's also the case, is it not, Mr. Trumpp, that the

1 plan administrator submitted a declaration from Craig Pino
2 of RECOVCO in support of its motion for a protocol. You
3 recall that?

4 A I know that he did, I haven't seen that document in a
5 long time.

6 Q But you did see it at the time?

7 A I did.

8 Q And you would have reviewed it at the time?

9 A Yes.

10 Q Okay. So let me just direct your attention -- and I
11 don't know if this is one of the binders that you have, sir,
12 and if it's not we'll get it to you -- to TRX-A72.

13 THE COURT: Thank you.

14 (Pause)

15 BY MR. SHUSTER:

16 Q Do you have the document, sir?

17 A I do.

18 Q So you can see there that it's a declaration of Craig
19 Pino, he's the head of RECOVCO, right?

20 A Yes.

21 Q And he signs this thing on page 7. And he has various
22 attachments actually going to -- which I'm not going to
23 particularly ask you about -- but going to the doability of
24 the protocol and the resources that each side could -- would
25 have to and would be able to devote to completing the

1 protocol in a timely and efficient manner, correct?

2 A Yes.

3 Q Okay. But let me just focus you on page 3 initially of
4 the document, Mr. Trumpp. And under the heading step one,
5 so it's -- I guess it's paragraph b -- paragraph 5(b) to be
6 precise, step one, and you see that the last sentence of
7 that paragraph says, "It is assumed the RMBS trustees will
8 present claims on 57 percent of their reviewed loans." You
9 see that?

10 A Yes, I do.

11 Q Okay. And then let me just also direct your attention,
12 if I might, Mr. Trumpp, to the next page of the document,
13 the second full paragraph on that page. So for -- I guess
14 for the record it's Section 5(c) and it's the second full
15 paragraph on page 4 of TRX-A72. So there Mr. Pino sets
16 forth another assumption does he not? Mr. Trumpp?

17 A I'm reading the document.

18 (Pause)

19 A I'm sorry, can you repeat your question?

20 Q There Mr. Pino sets forth another assumption, in fact
21 more than one?

22 A This document has several assumptions, yes.

23 Q Okay. So let's focus on the first one where he is
24 doing some math about how the protocol was likely to work,
25 and he says -- and he assumes that the plan administrator

1 agrees -- assuming the plan administrator agrees with 50
2 percent of the claims presented by the RNBS trustees the
3 plan administrator we have denied 46,113 claims. You see
4 that, sir?

5 A Sorry. I do see that.

6 Q So Mr. Pino assumed that 57 percent of the reviewed
7 loans would yield breach claims and that 50 percent of those
8 breach claims would be accepted by the plan administrator,
9 right?

10 A Yeah. And so what Mr. Pino was doing there --

11 Q No. No. No.

12 A -- was simply taking --

13 Q No, Mr. Trumpp, you don't have to testify to what
14 Mr. -- you know, you'll have an opportunity on redirect, you
15 had -- you know, you had plenty time to testify yesterday,
16 please answer my question, just -- and I just want to take
17 you through this math. So Mr. Pino made those assumptions.

18 Now in fact, Mr. Trumpp --

19 THE COURT: Time out. Come on up.

20 (Sidebar off the record)

21 BY MR. SHUSTER:

22 Q Now, let me direct your attention to the next sentence,
23 Mr. Trumpp. It says that of the remaining claims a certain
24 number would be denied for incontestable reasons and not
25 subject to further adjudication. You see that? See the

1 sentence, Mr. Trumpp?

2 A I do.

3 Q Okay. But let me just point you to the next one. He
4 says:

5 "For example, for document defect claims where
6 loan filed documents such as a HUD-1 settlement
7 statement are allegedly missing or where an appraisal
8 is allegedly missing it is my view based on prior
9 experience that the plan administrator will be able to
10 locate many of the documents that are asserted
11 missing."

12 Do you see that?

13 A Yes.

14 Q Okay. So Mr. Pino at least expected that certain
15 missing documents or compliance claims would be made in
16 error, that the plan administrator would be able to point
17 out the error, and those claims would be denied, correct?

18 A Correct, and that's --

19 Q And that's what happened?

20 A No. Many times in step two the trustees -- or excuse
21 me -- the plan administrator did find the documents and we
22 showed in our formal responses that we found the documents,
23 but the majority of the time in step two those claims
24 weren't rescinded in step two and we had to deal with them
25 in step three.

1 So these assumptions here aren't necessarily what
2 followed in reality.

3 Q Okay. Many certainly now, Mr. Trumpp, many missing
4 documents and defective document claims have been withdrawn;
5 isn't that correct?

6 A Ultimately now, yes, as the --

7 Q Okay.

8 A -- big mass withdraw prior to June of this, yes --

9 Q Now --

10 A -- but there are still documents in there where we
11 believe the documents are found.

12 Q Okay. And the parties have a disagreement on that,
13 right?

14 A That is correct.

15 Q Okay. Now, you know, Mr. Trumpp, you know again,
16 bearing in mind your comment about the 50 percent breach
17 rate seeming intuitively high to you, you know that when the
18 trustees selected loans to review that they adversely
19 selected those loans, right?

20 A It's my understanding that they sought loan files for
21 all loans that had liquidated with a loss and loans that
22 were still performing in these securities. Outside of that
23 I'm not necessarily sure what went into the review, because
24 I know they didn't necessarily review all of the loan files
25 they received.

1 Q So are you saying that you did not know at the time
2 that to the extent that the trustees reviewed loans that
3 were still active, which is to say they hadn't been
4 liquidated, that they selected those loans because they had
5 either been materially modified or they were loans on which
6 losses were expected? Did you not know that at the time?

7 A I've seen that exchanged in the expert reports, I did
8 not necessarily know that at the time.

9 Q I see. Did you know that the trustees, based on those
10 adverse selection criteria, had initially requested 210,000
11 loan files from the servicers?

12 A I do.

13 Q And you know that the trustees determined that 39,000
14 of those loan files, for one reason or another, were not
15 suitable or appropriate for review, correct?

16 A I'm not sure what went into their basis. I know they
17 ultimately didn't review them for one reason or another.

18 Q Right. And you know that the trustees did review
19 171,000 loans?

20 A Yes.

21 Q And you know that on those 171,000 loans the trustees
22 determined on their own that there were -- there was no
23 basis to assert a breach claim on those loans and so they
24 did not do so, correct?

25 A So in my perspective I'm not sure I would necessarily

1 say that was an adverse selection. They simply chose not to
2 review loans that had performed and paid off naturally,
3 which makes perfect sense, but they ultimately chose to
4 review every potential loan in these securitizations that
5 could possibly have a breach of representation and warranty
6 with an adverse material effect because it had a default.

7 So I'm not necessarily sure I would say that's an
8 adverse selection when you look for every possible source of
9 a claim.

10 Q Mr. Trumpp, I have to move to strike that answer as
11 non-responsive to my question. That was two questions ago.

12 What I just asked you was whether you were aware at the
13 time that of the 171,000 loan files that the trustees
14 reviewed they determined as to 77,000 of them that there was
15 not a -- that it would not be -- there was no basis to
16 assert a breach claim on those loan files. You know that
17 happened, right? That's just a yes or no.

18 A Yes.

19 THE COURT: Can I just -- you're specifically
20 asking the question does he know that as to 77,000 files if
21 there was no basis to assert a claim as opposed to they did
22 not assert a claim.

23 MR. SHUSTER: I would rather have asked the last
24 -- the second question if that's --

25 THE COURT: It's a different question.

1 MR. SHUSTER: It is. So I --

2 THE COURT: So --

3 MR. SHUSTER: -- I'd rather ask the second
4 question.

5 THE COURT: Then please go ahead.

6 MR. SHUSTER: So thank you.

7 BY MR. SHUSTER:

8 Q So with that, Mr. Trumpp, with that helpful correction,
9 you're aware that the trustees did not assert breach claims
10 on 77,000 of the loan files they reviewed, correct?

11 A Yes.

12 Q And in fact you said, you testified yesterday that the
13 trustees -- that you didn't see a breach claim on many loan
14 files that the trustees reviewed, right? You used those
15 words yesterday.

16 A On loans that they asserted claims on that we didn't
17 agree with? Yes.

18 Q No, no.

19 A All right.

20 Q I thought you testified yesterday that there were many
21 loan files the trustees reviewed where you never saw a claim
22 because none was presented.

23 A I'm not sure I understand your question.

24 Q I don't think it's important enough to go back to.

25 THE COURT: Mr. Cosenza?

1 MR. COSENZA: Can I have a side bar --

2 THE COURT: Sure.

3 MR. COSENZA: -- just for one minute?

4 (Sidebar off the record)

5 BY MR. SHUSTER:

6 Q I'm going to show you now, Mr. Trump, your own
7 declaration, which is TRX-726. Now, TRX-726 is your
8 declaration in support of the debtor's motion to estimate
9 the amount of claims, I'm going to paraphrase.

10 MR. SHUSTER: Can someone please help Mr. Trump
11 find the document? And let's not make him rifle through the
12 binder, so someone --

13 THE WITNESS: I see Volume I of the binders, and
14 I'm assuming --

15 MR. SHUSTER: I can give him my copy and look at
16 the screen if that helps.

17 MS. BRASWELL: Do you want my copy?

18 MR. SHUSTER: No, I'll give him mine.

19 MS. BRASWELL: You can give him this one, I have a
20 copy.

21 THE WITNESS: Thank you.

22 BY MR. SHUSTER:

23 Q Okay. Let's -- it terminates the effort to find the
24 binder in the interest of not having a disruption for the
25 witness. Thank you.

1 So this is a declaration that you signed and submitted,
2 sir? I think it's electronically signed, but that's your
3 electronic signature?

4 A Yes.

5 Q As it were? All right. So I just want to quickly
6 direct your attention to a couple of statements that you
7 make in here.

8 Paragraph 19 -- you describe in this declaration your
9 own estimation methodology, which you testified to
10 yesterday, correct?

11 A That's correct.

12 Q Okay. And in step six of your estimation methodology
13 you in the third sentence you say -- well the three
14 sentences are not all defaults and losses are the result of
15 breaches of representations and warranties. In many cases
16 when a default occurs they're not breaches of
17 representations and warrants. But then you go occur to say,
18 to account for such a scenario the calculation of the high
19 rate assumes that 35 percent of the losses are caused by a
20 breach of a representation or warranty, right?

21 A Yes.

22 Q So you're saying there -- the assumption you're making
23 there is that 35 percent of the breaches that are put
24 forward -- that 35 percent of the losses that you identify
25 in step one and in other steps will -- are caused by

1 breaches of representations and warranties. That's the
2 assumption that you make, correct?

3 A That's what the words on the page say. That's not
4 necessarily -- as I discussed yesterday, the intent behind
5 step six was to try and come up with a process and an
6 assumption for what percentage of loans would be brought
7 forth by the trustees as potential claims.

8 And so I put there caused by breach of representation
9 and warranty, and maybe in hindsight we should have
10 elaborated more on that. But it wasn't -- wasn't by
11 definition to say those are proven.

12 Q Mr. Trumpp, you reviewed a draft of TRX-726 before you
13 signed it, yes?

14 A Yes.

15 Q In fact, I'm assuming to a substantial extent you wrote
16 it since it reflects your estimation methodology, right?

17 A Yes.

18 Q And you had a chance to look at it and correct it and
19 get it accurate the way you wanted to?

20 A Yes.

21 Q Okay. Let me -- let me direct your attention -- and
22 then in step seven you say that you -- you refer to a
23 validation rate. So in step six you say you're assuming
24 that 35 percent of the losses are caused by a breach of
25 representation and warranty, but then you assume that only

1 40 percent of those breaches of representations and
2 warranties that cause losses would actually be in your words
3 validated, right? That's the assumption you're making for
4 purposes of your methodology?

5 A Yes.

6 Q Okay. Now two things. One, so you're assuming that 40
7 percent of the breaches that are put forward would be
8 validated, just so we're clear, by which you mean, I assume,
9 that they would be made out?

10 A And let's make sure that we're talking about the
11 definition here where it talks about validated meaning they
12 meet every element required for a purchase and/or
13 indemnification under the governing agreements. So --

14 Q Thank you for that --

15 A -- we were looking for a review here of the claims
16 submitted and estimating how many we thought would be
17 validated.

18 Q So that's what validated mean. Good. Thank you.

19 Now let me just direct your attention while we're on
20 the documents, Mr. Trumpp, let me direct your attention to
21 paragraph 14. In paragraph 14 you start with an aggregate
22 unpaid principal balance number, right?

23 A Yes.

24 Q And you've attempted to get that number right and
25 accurate, correct?

1 A Yes.

2 Q Okay. And what you relied upon to establish that
3 information was Intex and Intex is a public subscription
4 service, right --

5 A Yes.

6 Q -- that provides data on, among other things,
7 securitizations of loans and securitizations?

8 A That's correct.

9 Q Okay. And where -- Intex did not have -- you say in
10 the last sentence, if Intex, the public service, Intex, did
11 not contain the unpaid principal balance for a particular
12 deal the debtors then look to the monthly trustee remittance
13 statements, correct?

14 A That's correct.

15 Q Now you -- those are the same monthly trustee
16 remittance statements that you are unwilling to look to for
17 purposes of establishing realized losses for the purchase
18 price calculations on breaching loans; is that right?

19 A That is correct. And --

20 Q Okay.

21 A -- there's a difference in the usage. Here we were
22 looking for the total amount of losses for any one
23 particular securitization so an aggregate number versus in
24 the protocol where we're looking for loan level specific
25 information, so two different rational. And in one instance

1 it was okay to use Intex and remittance reports and in
2 another instance it wasn't.

3 Q And you made that decision?

4 A Yes.

5 Q Yes. So -- but you did want to be precise, right? I
6 mean, you wanted to get the numbers right because you were
7 presenting an estimation methodology to the Court the first
8 step in which was establishing an aggregate unpaid principal
9 balance, right?

10 A Correct. And the --

11 Q Okay.

12 A -- the debate isn't around the total number of losses
13 at the securitization level. It's a question of at the loan
14 level.

15 Q And remittance reports, in fact, have loan level data,
16 do they not, Mr. Trumpp?

17 A They do, but it's --

18 Q Okay. That --

19 A -- the level of --

20 Q No. No. I don't --

21 A -- data --

22 Q I'll -- you --

23 A -- available.

24 THE COURT: So, Mr. Trumpp --

25 THE WITNESS: It's different.

1 THE COURT: -- I'm going to have to intercede here.
2 Like any careful witness you're trying to very carefully
3 answer Mr. Shuster's questions which can be a little
4 frustrating to do in a yes or no format, but he's entitled
5 to try to ask you yes or no questions since it's his cross-
6 examination and counsel for the plan administrator on
7 redirect examination can -- can take you back to these
8 topics.

9 So in -- please endeavor to answer his questions to
10 the extent that you can. If you believe that a question is
11 not capable of a yes or no answer you can tell Mr. Shuster
12 that. But otherwise we're going to be here for a very, very
13 long time.

14 THE WITNESS: Okay.

15 BY MR. SHUSTER:

16 Q So just to make sure we're in sequence, sir, the
17 remittance reports do provide loan level data for each
18 individual loan, correct?

19 A Yes.

20 Q And one of the items of information that remittance
21 reports provide for individual loans is a realized loss
22 number, correct?

23 A Yes.

24 Q And remittance reports are actually -- and there --
25 remittance reports are prepared by trustees, correct?

1 A You know, I think it may vary sometimes by trustees,
2 sometimes by securities administrator. I'm not a hundred
3 percent sure.

4 Q Very good. But you do know that the information that
5 goes into remittance reports is provided by master
6 servicers, right?

7 A If there's a master servicer on that deal, yes.

8 Q Okay. And so, for example, Aurora was a master
9 servicer for many of the securitizations at issue here,
10 right, and many others?

11 A Yes. And later Nationstar took that role over.

12 Q Right. So just so we're clear and then we'll come back
13 to Aurora, Aurora's servicing business was acquired by
14 Nationstar? That's what you're saying?

15 A Aurora acquired -- or excuse me, Nationstar acquired
16 Aurora's primary servicing and master servicing operations.
17 Yes.

18 Q Thank you very much.

19 So the data that goes into the remittance reports where
20 there's a master servicer is provided by the master
21 servicer, correct?

22 A Yes.

23 Q And those data are provided by the master servicer in
24 data tapes that they publish on a monthly basis or in some
25 other equivalent data format, correct?

1 A That's my understanding.

2 Q And the information that goes into the data that the
3 master servicer aggregates and publishes is provided by the
4 primary servicers in those securitizations, correct?

5 A Yes.

6 Q And the remittance reports are used, among other
7 things, they're -- they're made available to investors, to
8 certificate holders, right?

9 A Yes.

10 Q And they're used among -- for among other purposes to
11 advise certificate holders of distributions to which they'll
12 be entitled under the waterfall provisions applicable to
13 that securitization, right?

14 A Yes.

15 Q They're also used to advise certificate holders of the
16 losses that they incur in whatever tier of the waterfall
17 they happen to be holding certificates, right?

18 A Yes.

19 Q And a remittance report, in fact, is good enough to
20 tell a certificate holder, your paper is worthless, you're
21 wiped out, right?

22 A Yes.

23 Q Thank you, sir.

24 Okay. We're done with that document.

25 Now you joined Lehman in February of 2009, very shortly

1 after it filed for Chapter 11?

2 A Yes.

3 Q Lehman filed in September of 2008 and you joined in
4 February '09?

5 A For the previous four years you had been working at
6 Aurora '05 to '08?

7 A No. I had worked 2002 to '09 and then previous to even
8 before that at Aurora.

9 Q Okay. In 2002 to 2004 you worked principally in
10 secondary marketing?

11 A Yes.

12 Q And then starting in '05 you started to get involved in
13 contract administration, put backs, repurchase claims?

14 A And loss management, yes.

15 Q Okay. So that started in '05. So you had four years
16 of experience working in contact administration repurchases
17 and put backs roughly by the time you joined Lehman in
18 February of '09?

19 A I did. Yes.

20 Q And you had spent some years before that also earlier
21 at -- you graduated school in -- college in '98?

22 A From undergrad, yes.

23 Q And then you did a masters in finance starting in '99
24 and you spent a few years doing that and working as a
25 financial analyst at Aurora and at an energy company called

1 Equilan (ph)?

2 A That is correct.

3 Q Okay. So coming back to '05, that four years you spent
4 at Aurora before you joined Lehman, that was the sum total
5 of your experience at that point in time in connection with
6 put back and repurchase claims?

7 A I'm not sure I would characterize it that way. I
8 continued working on repurchase claims when I went to Lehman
9 and worked on repurchase related claims through that period,
10 but if you're talking about just Aurora the answer would be
11 yes.

12 Q No, I didn't -- I'm sorry. I didn't mean to suggest
13 otherwise. As of the time when you joined Lehman in
14 February of '09 you had spent approximately four years
15 working in the repurchase and put back field?

16 A Yes.

17 Q And then much of your time as you mentioned at Lehman
18 has been working on these claims, right?

19 A Yes.

20 Q You had no prior experience, in fact, you have no
21 experience originating loans, isn't that correct?

22 A That is correct.

23 Q You had -- then have no experience underwriting
24 mortgage loans?

25 A That is also correct.

1 Q You're not a mortgage loan underwriter and you're not a
2 repurchase reviewer either, right?

3 A Correct.

4 Q And it's fair to say that you don't even know some of
5 the basics, Mr. Trumpp, about loan origination like why even
6 numbers, round numbers, for example, are a red flag when
7 there's a statement of income in round numbers?

8 A As I've said and you just reiterated, I'm not an
9 underwriter. I've not been involved in the loan application
10 process. That's not my expertise.

11 Q Similarly, you wouldn't know to the extent that -- you
12 know, you've heard the term the three C's, credit,
13 collateral, compliance, but it's not a term that you're
14 familiar with or sort of have worked with, correct?

15 A I'm aware of them. I've not been in a position where I
16 had to apply them.

17 Q You made the final cut here on all breach claims by the
18 trustees, correct?

19 A Based upon the information from our RECOVCO reviews and
20 RBF, yes.

21 Q But you were the ultimate decision-maker, right?

22 A That's correct.

23 Q So as of the time that the protocol started in December
24 of 2014 you had the four years at Aurora and then you had
25 the four or five years that you were working at Lehman, the

1 bankrupt estate, processing claims and so forth, right?

2 A Yes. And can I --

3 Q Okay.

4 A -- elaborate on that?

5 Q You can on redirect.

6 A Okay.

7 Q So -- now you structured Lehman's protocol process,
8 didn't you, sir?

9 A I helped negotiate it and set it up, yes.

10 Q Well, I'm -- I'm talking about what you testified to
11 yesterday, the review structure that you testified to
12 yesterday where there was RECOVCO and then there was on top
13 of that RBF and then you, that's something you set up,
14 right?

15 A So I think the diagram you're referring to talked about
16 RECOVCO, RBF and the plan administrator. There's more
17 people than just me on my team. But, yes.

18 Q Okay. And when you said earlier you negotiated that --
19 that -- the plan administrator's protocol review structure
20 and process was not a matter of negotiation with the
21 trustees, correct?

22 A That is correct.

23 Q That was a decision that you made?

24 A Yes.

25 Q You also made final material and adverse effect calls,

1 right?

2 A I did.

3 Q And for both breach calls and material adverse effect
4 calls you relied on the advice of counsel?

5 A I did.

6 Q You hired RECOVCO. You extolled their virtues and
7 expertise yesterday as a forensic review firm, but you did
8 not empower RECOVCO to pass breaches using your pass/fail
9 lexicon?

10 A That is correct. So as we --

11 Q No. I -- I'm just trying to establish -- make sure we
12 have clear those facts. RECOVCO did have people with more
13 experience in the field than you had, right?

14 A From an underwriting or purchase review perspective,
15 yes.

16 Q Okay. You did not empower RECOVCO to pass breaches
17 without counsel review?

18 A That is correct.

19 Q And, in fact, according to the plan administrator's
20 expert, Mr. Grice, you actually told RECOVOC how to review
21 loans; is that correct?

22 A RECOVCO, as I talked about yesterday, brought certain
23 elements to the table and they had a tremendous amount of
24 experience reviewing loans. I shared with them some of my
25 experience for pursuing claims and reviewing defects. And

1 so we collaborated and worked together in that process.

2 Q Mr. Grice says, I'm sure you've read the testimony,
3 that you taught RECOVCO how to do a nuance review. Is that
4 an accurate statement, yes or no?

5 A I'm not necessarily sure what Mr. Grice was thinking
6 when he said that statement, but I can tell you --

7 Q Well, I --

8 A -- it was a collaborative --

9 Q -- I'm --

10 A -- process.

11 Q -- I'm really going to that statement, sir. So forgive
12 me for interrupting, but I'm trying to be efficient. Mr.
13 Grice said that RECOVCO had never done a review as nuance as
14 this one because it didn't exist before. Do you agree with
15 that statement, Mr. Trumpp, yes or no?

16 A I agree that we did a very nuanced, thorough review.

17 Q And do you agree that RECOVCO had never previously done
18 a review that was equivalently nuanced, yes or no?

19 A RECOVCO had done many reviews up until that point so
20 I'm not necessarily sure to what context all those were. I
21 can just tell you I feel and I believe we had a unique
22 process.

23 Q Unique. Well, Mr. Grice did say that your process had
24 never existed before. Do you agree with that?

25 A I am not aware of any other instances similar to this.

1 (Pause)

2 Q I just want to pull up, Mr. Trump, I don't think we
3 have this on the screen, but your chart of -- from your
4 binder of yesterday. I think we made copies so we could
5 hand those out. And I --

6 MR. SHUSTER: Would someone be good enough to hand
7 one to Mr. Trump?

8 UNIDENTIFIED SPEAKER: Is this the (indiscernible
9 1:13:22)?

10 MR. SHUSTER: Yes.

11 UNIDENTIFIED SPEAKER: Okay.

12 THE COURT: What page from the deck is that?

13 MR. SHUSTER: Page 18, Your Honor.

14 THE COURT: Thank you.

15 BY MR. SHUSTER:

16 Q So that chart at page 18 of the plan administrator's
17 direct examination, Zachary Trump, shows RECOVCO and RBF at
18 the same level of review. But, in fact, the hierarchy was
19 RECOVCO at the bottom, then RBF, correct?

20 A How -- I'm not sure what you mean by hierarchy.

21 Q RBF was -- RECOVCO didn't have the power to pass breach
22 claims where it thought there was a potential for actual
23 breach claim. It had to submit that up to RBF for further
24 review, correct?

25 A So I think it -- when it got passed from RECOVCO to RBF

1 isn't necessarily a matter of what RECOVCO was a pass or a
2 breach claim. Again, RECOVCO's review as at the threshold
3 fax level. They weren't necessarily looking and applying
4 representations and warranties or AMAs. So all they were do
5 -- doing was looking at an assessment of the threshold
6 facts.

7 And so I guess I'm not sure what you mean by hierarchy.
8 They were a part of the review. They reviewed all claims
9 submitted by the trustees. But I don't know what you mean
10 by hierarchy.

11 Q Okay. Well, let's take it in very simple terms. Did
12 any loans that got reviewed by RBF go back down to RECOVCO
13 for review?

14 A There were many times when RBF was reviewing a loan and
15 they had questions about what RECOVCO may have found. They
16 went back to them for additional clarification or if they
17 wanted something calculated. So there was communication
18 between the parties.

19 Q There was communication. But once RBF made a decision
20 on a loan file, Mr. Trumpp, did that loan file go back to
21 RECOVCO for further review?

22 A No.

23 Q Okay. But when RECOVCO made a determination on a loan
24 file, and if it determined that there was a potential basis
25 for a defect or a potential material and adverse effect,

1 that went up to RBF for review, correct?

2 MS. BRASSWELL: Objection. That -- objection.

3 THE COURT: What's the objection?

4 MS. BRASSWELL: Misstates his testimony. I can
5 approach the bench if you don't want me to elaborate, but it
6 misstates Mr. Trump's prior testimony. He said that
7 RECOVCO wasn't making determinations about whether there was
8 a potential for a defect. They were simply assessing
9 threshold facts. And Mr. Shuster mischaracterized that.

10 THE COURT: I -- I don't think there's really much
11 here to be squabbling about, frankly. I don't know if it
12 has to do with the word "up." I think -- we're talking
13 about a sequential process, right? Right? Maybe?

14 MR. SHUSTER: That's --

15 THE COURT: What you're trying to --

16 MR. SHUSTER: Not --

17 THE COURT: -- you're trying --

18 MR. SHUSTER: Not necessarily the word I would use,
19 but yes.

20 THE COURT: You're trying to find out --

21 MR. SHUSTER: Yes.

22 THE COURT: -- what the process is.

23 MR. SHUSTER: Yeah.

24 THE COURT: So all right. Let's let Mr. Shuster
25 continue.

1 BY MR. SHUSTER:

2 Q Mr. Trumpp, isn't it correct that if RECOVCO determined
3 that there was not a factual basis for the defect then it
4 could just reject the loan itself. But if it determined
5 that there was or might be a factual basis for the defect
6 then it referred the loan to RBF; is that accurate?

7 A Yes.

8 Q RBF is Lehman's trial counsel, correct?

9 A That is correct.

10 Q And you mentioned that you have worked with Mr. Rollin
11 for ten years as counsel for Lehman and Aurora, right?

12 A Yes.

13 Q You mentioned earlier that this review was unique. Are
14 you aware of any large scale loan review for repurchase
15 purchase -- purposes where a law firm sat on -- trial
16 counsel for the plaintiff sat on top of the loan review firm
17 and made the ultimate call whether there was a breach and
18 whether there was a material adverse effect?

19 A So as you stated --

20 Q Are you aware of one?

21 A As you stated earlier my career has almost exclusively
22 been at Aurora and Lehman. I have not wandered outside of
23 the bounds of Aurora and Lehman, shall we say. And so I
24 can't necessarily tell you what else is going on in the
25 market for -- with great certainty. So I can't tell you

1 what other banks, other wall street firms may have done.

2 The trustees made breach of contract claims against the
3 estate. I thought it was entirely reasonable to have
4 attorneys reviewing those claims.

5 Q Okay. Now the -- RBF are not mortgage loan
6 originators, are they?

7 A No.

8 Q They're not mortgage loan underwriters?

9 A No. They have -- members of their team have legal
10 experience and mortgage legal experience. But, no, they are
11 not underwriters and they are not originators.

12 Q They're lawyers and that's what they're trained in,
13 right?

14 A Yes.

15 Q Mr. Trumpp, you relied upon the lawyers to tell you
16 what the material and adverse effect standard should be?

17 A So we had, you know, obviously been working under these
18 contracts for the experience that I had at Lehman. We had
19 experience putting loans back under these contracts. And so
20 did I have conversations with counsel throughout this
21 process about definitionally what that means, yes, but it's
22 something that we had, you know, had in practice prior.

23 Q Your lawyers told you not to apply a risk of loss
24 standard, correct?

25 MS. BRASSWELL: Objection, Your Honor. To the

1 extent this is getting close to privilege I just want to
2 make sure that I asserted my objection. And if it goes too
3 far I would like to instruct the witness appropriately.

4 THE COURT: Okay. I also want to -- that's fair.
5 So, Mr. Trumpp, the plan administrator has not waived
6 attorney/client privilege with respect to communications
7 that the plan administrator may have had with counsel on any
8 of the legal issues presented here. So if you find yourself
9 getting near that subject matter you need to let us know.

10 Secondly, I just want the record to be clear. Mr.
11 Shuster, I think you said material and adverse effect two
12 questions ago. Material appears in two different parts of
13 this. So I just want to be clear that we're not conflating
14 --

15 MR. SHUSTER: Yes. And I --

16 THE COURT: -- that. There is no --

17 MR. SHUSTER: -- I'm --

18 THE COURT: -- material breach and if you were
19 solely talking about adverse material effect, that's fine.
20 I just don't want the record to be unclear in that regard.

21 MR. SHUSTER: Yes.

22 THE COURT: Okay.

23 MR. SHUSTER: No. And I'm going to come to both
24 prongs. I use material and adverse effect because that's
25 what I've been using for the past several years.

1 THE COURT: Understood. But when you say that --

2 MR. SHUSTER: I mean what --

3 THE COURT: -- then we're going to assume you mean

4 AMA.

5 MR. SHUSTER: AMA.

6 THE COURT: Very good.

7 MR. SHUSTER: Yes.

8 BY MR. SHUSTER:

9 Q Mr. Trumpp, I asked you at your deposition what your
10 basis was for your understanding that an increase in the
11 risk of loss on the loans was not the AME standard that
12 applies here, and you told me your basis was discussions
13 with counsel. Do you recall that?

14 A I do.

15 Q And I asked you if you had any other basis and you said
16 no. Do you recall that, too?

17 A I do.

18 Q And that's still accurate testimony?

19 A For risk of loss.

20 Q For material adverse effect?

21 A I believe so. Yes.

22 Q The -- RECOVCO reviewed some 62,000 loans or
23 thereabout?

24 A Yes.

25 Q And about 20,000 of those loans went up to RBF for

1 review?

2 A Approximately.

3 Q And about 1,000 loans made it out of there as accepted
4 breaches by the plan -- accepted breaching loans by the plan
5 administrator, correct?

6 A I think we're a little higher than that today. Yes.

7 Q Twelve-hundred.

8 A Yes.

9 Q Something like that. We looked at some math. You
10 testified yesterday to some math. The math is that
11 currently there are roughly 72,500 loans at issue, right?

12 A I think it's even less today based upon additional
13 trust collapses and payoffs, but approximately 70,000.

14 Q Seventy-thousand?

15 A Yes

16 Q Okay. I'll take that number. And so loan to loan,
17 sir, 70,000 loans remaining at issue, about 1,200 loans that
18 have been accepted by the trustee -- by the plan
19 administrator for the repurchase remedy, so that's still
20 under two percent, right, if you do it that way?

21 A Yeah. It's all a question of --

22 Q How you do the math.

23 A -- of how you do the math and what's in the denominator
24 and what's in the numerator.

25 Q Yes. So now, Mr. Trumpp, you mentioned that -- well,

1 you testified yesterday about your experience at Aurora and
2 Lehman and how you drew on that experience in, you know,
3 structuring and arranging the plan administrator's protocol
4 review, correct, just foundationally, yes?

5 A Yes.

6 Q Okay. You recall, though, when I asked you whether you
7 applied the same evidentiary standards in the protocol that
8 you did at Aurora you insisted to me in your deposition that
9 what you did at Aurora and what you were doing in the
10 protocol was apples and oranges, your term. Do you remember
11 saying that?

12 A I do.

13 Q You said it was drastically different what you did at
14 Aurora and what you were doing in the protocol. Do you
15 remember using those words?

16 A Different context.

17 Q Different context. But you used the words, drastically
18 different?

19 A I very well could have.

20 Q And you said it was totally different scenarios, right?

21 A That is true.

22 Q You also said they were totally separate situations?

23 A Yes.

24 Q You also testified that the agreements and
25 representations were totally different, didn't you, sir?

1 A I think I recall saying that they were different. I'm
2 not sure I --

3 Q Okay.

4 A -- said totally, but I may have.

5 Q I want to direct your attention, Mr. Trumpp, if I may
6 to the plan administrator's motion in support of a protocol
7 -- the protocol. I confess to not having the exhibit number
8 -- oh, I actually --

9 UNIDENTIFIED SPEAKER: 876.

10 MR. SHUSTER: -- 876. And now I think it's
11 actually 873, the --

12 UNIDENTIFIED SPEAKER: That's the reply.

13 MR. SHUSTER: But doesn't the reply have paragraphs
14 95 in it?

15 UNIDENTIFIED SPEAKER: No. That's --

16 MR. SHUSTER: It's -- you've -- okay. So -- and
17 many other things besides. But --

18 THE COURT: Exhaustion?

19 MR. SHUSTER: Yes. Well, raw intellect. A lot of
20 things. So --

21 THE COURT: Are we in a binder? Let's start this.

22 MR. SHUSTER: We -- we are in which binder?

23 UNIDENTIFIED SPEAKER: The second.

24 THE COURT: The second volume?

25 UNIDENTIFIED SPEAKER: Yes.

1 MR. SHUSTER: It's the supporting documents. Are
2 their binders labeled?

3 UNIDENTIFIED SPEAKER: No.

4 MR. SHUSTER: Okay. Anyway, it's 876. Can someone
5 have -- make sure that the witness has the document and can
6 someone make sure the Court has the document?

7 THE WITNESS: I'm sorry, you say 8 --

8 MR. SHUSTER: The only people who seem to have it
9 are my esteemed colleagues on the other side.

10 THE COURT: All right. We are in -- we are in
11 binder 1 --

12 UNIDENTIFIED SPEAKER: Is it --

13 THE COURT: -- TRX --

14 THE WITNESS: Is it 876?

15 THE COURT: -- 876. Yes.

16 MR. SHUSTER: You have it.

17 THE COURT: Okay.

18 MR. SHUSTER: Thank you.

19 BY MR. SHUSTER:

20 Q Okay. So I think I want paragraph 95. Okay.

21 A 95?

22 Q So the -- in paragraph 95 part of what the plan
23 administrator, I think, is saying here is that it -- it
24 bargained for a claims reconciliation process in the
25 securitization documents that would enable it to pursue

1 downstream claims. That's generally was the plan
2 administrator's position, correct?

3 A Yes.

4 Q And then it says -- it goes on to say in the second
5 sentence that as discussed above earlier many of the
6 mortgage loans were required by LBHI from loan originators
7 that made representations and warranties about the qualities
8 of these loans, loans that LBHI then packaged and sold into
9 the RMBS trusts. Do you see that?

10 A Yes.

11 Q And then it says a key component to this process was
12 that LBHI duplicated the representations and warranties made
13 by the mortgage loan originators, meaning that the
14 representations and warranties made by LBHI to the trust
15 were the same as the representations and warranties made by
16 the mortgage loan originators to LBHI. Do you see that?

17 A I do see that.

18 Q Okay. So incidentally you had policies and procedures
19 at Aurora for dealing with loan reviews as quality control
20 loan reviews and loan reviews in Aurora's capacity as a
21 master servicer?

22 THE COURT: Yes.

23 MS. BRASSWELL: Objection. Mr. Shuster is
24 referencing Aurora policies and procedures. I know this
25 issue came up in deposition and we objected on relevance

1 grounds.

2 THE COURT: Why don't you come on up for a moment?

3 (At sidebar off the record)

4 BY MR. SHUSTER:

5 Q You --

6 MR. SHUSTER: Did I get an answer to that question
7 if the other --

8 THE COURT: Why don't you repeat it for all of our
9 benefit?

10 MR. SHUSTER: If I can remember.

11 THE COURT: If you can remember.

12 BY MR. SHUSTER:

13 Q Did you -- Aurora had policies and procedures manuals
14 for, among other things, loan reviews for the purposes of
15 quality control and making, potentially making repurchase
16 claims?

17 A Yes.

18 Q And you were familiar with those when you were at
19 Aurora?

20 A When I was at Aurora, yes.

21 Q Okay. You did not provide copies of those policies and
22 procedures to RECOVCO?

23 A No, we did not.

24 Q Or to RBF?

25 A No.

1 Q Or to Mr. Grice?

2 A No.

3 Q Or to Mr. Castel?

4 A No.

5 Q We'll come back to those.

6 Mr. Trumpp, you testified that Lehman never put back
7 active loans? I thought I heard you testify to that.

8 A I don't think that was my intent if that's the way it
9 came out. We -- by definition we were seeking repurchase of
10 loans back in the day because a lot of these loans were
11 available for repurchase then. So they would have been
12 active, meaning not liquidated, but they would have clearly
13 had difficult payment histories or, you know, they would be
14 deep in the process of foreclosure. So that -- to say that
15 we didn't ever pursue active claims is not the correct way
16 to look at it.

17 And what I meant by saying I was anticipate -- not
18 anticipating seeing active claims here, we're again talking
19 about ten-ish years later. And so I would have assumed any
20 loans that had breaches of -- material breaches of
21 representations and warranties that had AMA, they would have
22 already defaulted and gone through the foreclosure process.

23 Q Well, you used the lexicon yesterday, liquidated loans
24 and active loans, right?

25 A I did.

1 Q And a liquidated loan was a loan that was no more,
2 right?

3 A Yes

4 Q And an active loan is a loan that still exists, right?

5 A That's correct.

6 Q Okay. And Aurora, certainly, and Lehman, but asserted
7 put back rights with respect to both liquidated and active
8 loans, correct?

9 A Yes.

10 Q Okay. I'm not sure if I asked this and I do want it to
11 be clear for the record. In performing its MAE analysis the
12 plan administrator did not apply a risk of loss standard,
13 correct?

14 A So, again, I'm not necessarily an attorney as you all
15 know --

16 THE COURT: You're actually not an attorney at
17 all.

18 (Laughter)

19 THE WITNESS: I'm sorry. Yes. Yes. Sorry. Yes.

20 THE COURT: Okay.

21 THE WITNESS: Yeah. I -- can you elaborate on
22 what you mean by risk of loss standard?

23 BY MR. SHUSTER:

24 Q If the misrepresentation in question or omission
25 increased the risk of loss on a loan, that was not

1 sufficient for the plan administrator to determine that
2 there was a material and adverse effect on the value of the
3 loan?

4 A So we looked at our reviews in context with the
5 representations and warranties and remedies or repurchase
6 provisions for these agreements. And it's my understanding
7 that they say adverse and material effect on the value of
8 the loan and occasionally they say to the interest of the
9 certificate holders, but they do not say risk of loss. So I
10 think those are separate things.

11 Q Okay. I understand that that's your position. But is
12 it -- to be clear it's the plan administrator's position
13 that simply showing that a misrepresentation or omission
14 leads to an increased risk of loss on a loan is not
15 sufficient to satisfy the material and adverse effect
16 standard under the governing documents, correct?

17 A So we looked at and applied the adverse and material
18 effect standard in the agreements which is not an adverse
19 and material effect on the risk of loss.

20 Q So --

21 A And that's not what is there.

22 Q So I'm correct then, am I not, just so that we have a
23 clear answer to what I think is a clear question, that it
24 was the plan administrator's position that simply
25 establishing, whether by expert opinion testimony or

1 otherwise, that a misrepresentation or omission increases
2 the risk of loss on a loan, a mortgage loan, is in and of
3 itself insufficient to satisfy the material and adverse
4 effect standard under the governing documents, correct?

5 A Yes.

6 Q Now I know you're not an expert on mortgage loan
7 pricing, Mr. Trumpp, but you have heard the term risk based
8 pricing as it applies to mortgage loans?

9 A Yes, I have.

10 Q And at least some of the factors that bear on the
11 pricing of mortgage loans go to the riskiness of the loan?

12 A Yes.

13 Q All other things being equal as between mortgage loans,
14 the riskier one will have a lower price?

15 A Or a higher interest rate.

16 Q Well, let's focus on price. All other things being
17 equal between mortgage loans the riskier one will have a
18 lower price?

19 A There are numerous factors in pricing a loan.
20 Sometimes it changes to price. Sometimes it changes to the
21 interest rate. So I want to make sure I'm clear.

22 Q Some change to the terms of the loan or the price of
23 the loan?

24 A I'm sorry. Can you repeat your question?

25 Q Let's do it this way. Let me direct your attention to

1 page 288 of your -- the transcript of your deposition. I'm
2 not sure if we've blended that around yet, but if we haven't
3 we'll do so now.

4 A Okay.

5 THE COURT: Okay. Do we have that?

6 UNIDENTIFIED SPEAKER: We do.

7 THE COURT: Can you tell us where it is?

8 UNIDENTIFIED SPEAKER: Yes. It is in Volume 2,
9 TRX-971.

10 (Pause)

11 THE WITNESS: And it's in Volume --

12 UNIDENTIFIED SPEAKER: I'm sorry. Volume 3.

13 THE WITNESS: Okay.

14 UNIDENTIFIED SPEAKER: TRX-971.

15 THE COURT: And what page are we on?

16 MR. SHUSTER: We are on page 288.

17 THE COURT: 288. And are we refreshing
18 recollection?

19 MR. SHUSTER: I'm -- the witness answered the
20 question here I -- in my view differently than he did in the
21 deposition.

22 THE COURT: Okay.

23 MR. SHUSTER: Okay.

24 THE COURT: Got it.

25 BY MR. SHUSTER:

1 Q So, Mr. Trumpp --

2 A I'm sorry. I'm still trying to find it.

3 Q Page 288, Mr. Trumpp. Oh, you're --

4 A Volume --

5 Q -- trying to find the transcript?

6 A In volume 3?

7 THE COURT: 2, Volume II.

8 UNIDENTIFIED SPEAKER: These volumes are
9 different.

10 THE COURT: Oh, that would be making it even more
11 complicated. If the witness's volumes are different than
12 ours, then --

13 THE WITNESS: I'm trying to find it.

14 MR. SHUSTER: Woe unto us all.

15 (Pause)

16 THE COURT: You can have my copy. Okay.

17 MR. SHUSTER: He can have mine, too.

18 UNIDENTIFIED SPEAKER: I'm looking for Volume 6.

19 MR. SHUSTER: We're going to sharpen that up.

20 THE COURT: I bet we are.

21 (Laughter)

22 MR. SHUSTER: Sorry about that.

23 THE COURT: It's all right. Okay.

24 BY MR. SHUSTER:

25 Q Page 288, Mr. Trumpp, I asked you at line 14, "All

1 other things being equal as between mortgage loans will the
2 riskier one have a lower price, all other things being
3 equal?" And you said, "All other things being equal
4 completely hypothetically, yes." that was the answer you
5 gave me then, right?

6 A Yes.

7 Q But you want to add now that there could also be an
8 effect on the interest rate or other terms of the loan?

9 A I wasn't trying to confuse things. I was just saying
10 that there are other potential options, so.

11 Q Mr. Trumpp --

12 MS. BRASSWELL: Objection. Your Honor, I think it
13 just needs to make -- we need to make sure that if he's
14 showing him his testimony it's a complete showing.

15 THE COURT: Right. But I think right now the -- I
16 think now the testimony has been clarified so I think we're
17 good on that. From my perspective we're good on this point.
18 Okay.

19 Do you have a -- you have a completeness
20 objection?

21 MS. BRASSWELL: Yes, Your Honor.

22 THE COURT: Okay. Why don't you tell us what you
23 would like him to be read?

24 MS. BRASSWELL: Well, Your Honor, what he
25 testified to earlier was that it depends on the facts and

1 circumstances, and the deposition testimony that Mr. Shuster
2 showed doesn't show the following answer that Mr. Trumpp
3 gives, which is, "It depends on the facts and circumstances.
4 All other things being equal talking about the pricing as
5 you said Aurora for the pricing of whole loans." And so he
6 clarifies in his deposition that this is with respect to
7 whole loan pricing.

8 THE COURT: Fair enough. Okay.

9 Mr. Shuster, I'm going to ask you to wrap up since
10 we're approaching 12:00.

11 MR. SHUSTER: I'm happy to pause here if --

12 THE COURT: Is that alright?

13 MR. SHUSTER: Yes. Thank you.

14 THE COURT: Okay. All right. So do you -- do you
15 want this to be your lunch break or do you want to come back
16 at 12:15, or we can continue for another segment?

17 MR. SHUSTER: What's the will of the group?

18 THE COURT: How are you doing, Mr. Trumpp?

19 THE WITNESS: I'm doing fine.

20 THE COURT: Do you have a preference?

21 THE WITNESS: Let's keep going.

22 MR. SHUSTER: Happy to come back?

23 UNIDENTIFIED SPEAKER: Yeah. Well, we can come
24 back -- we can come back at 12:15, 12:20, Your Honor.

25 THE COURT: Okay. I will hop off the call at

1 12:15. Okay.

2 Thank you.

3 MR. SHUSTER: Thank you, Your Honor.

4 (Recessed at 11:54 a.m.; reconvened at 12:23 p.m.)

5 MR. SHUSTER: Thank you, Your Honor.

6 BY MR. SHUSTER:

7 Q I'm going to ask you, Mr. Trumpp, to turn to TRX-927
8 which I hope is in the binder that is -- there you go.

9 MR. SHUSTER: Thank you, Counsel.

10 (Pause)

11 BY MR. SHUSTER:

12 Q Mr. Trumpp, TRX-927 is a declaration that you executed
13 and signed on -- under penalty of perjury under the laws of
14 the United States on 20 -- October 29, 2009 in Denver,
15 Colorado, correct, page 7?

16 A Yes, it is.

17 Q That's your signature, sir?

18 A Yes, it is.

19 Q And you submitted this declaration in the matter of
20 Aurora Loan Services LLC f/k/a Aurora Loan Services Inc. and
21 Lehman Brothers Holdings Inc., plaintiffs, versus Dream
22 House Mortgage Corporation, correct?

23 A Yes.

24 Q And you stated in the first paragraph, "I'm employed by
25 the plaintiff, Lehman Brothers Holding Inc.," right?

1 A Yes.

2 Q And then in -- and you refer to a loan purchase
3 agreement between LBB and the defendant, correct, in
4 paragraph 2?

5 A Yes.

6 Q And in paragraph 3 you state that you're attaching as
7 Exhibit B a true and correct copy of the seller's guide,
8 correct?

9 A Yes.

10 Q And that is the Aurora's seller's guide that applied to
11 loan purchase transactions between Aurora and originators?

12 A Yes.

13 Q The originators originated the mortgage loans and
14 Aurora or Lehman Bank underwrote the mortgage loans?

15 A It would depend upon the transaction.

16 Q But generally that would be the arrangement?

17 A Under the correspondent business which this contract
18 refers to sometimes Aurora would underwrite the loans and
19 sometimes the seller would have what's called delegated
20 authority where they underwrote the loans themselves?

21 Q Thank you.

22 THE COURT: Mr. Trumpp, could I ask you to speak
23 up a little more? Pull the microphone towards you a bit and
24 just kind of raise your voice.

25 Thank you.

1 BY MR. SHUSTER:

2 Q Now paragraph 4 refers to the fact that Dream House
3 sold various loans to LBB. Do you see that, sir?

4 A Yes, I do.

5 Q That was Lehman's mortgage bank, essentially, yes?

6 A It was -- yes.

7 Q And then paragraph 5 you state, Aurora's the authorized
8 agent, servicer and/or master servicer for LBB and LBHI for
9 certain mortgage loans in which LBB and LBHI have an
10 interest, including the loans at issue in this case. Do you
11 see that?

12 A I do.

13 Q That was an accurate statement at the time?

14 A It was.

15 Q And you go on to say in paragraph 6 that Aurora is
16 authorized and directed by LBB and LBHI to enforce any
17 obligations owed to them by parties selling mortgage loans
18 in which LBB and L -- and/or LBHI have an interest. Do you
19 see that?

20 A I do.

21 Q Also accurate?

22 A Yes.

23 Q And in paragraph 7 you note that LBHI is the parent
24 corporation of both LBB and Aurora, correct?

25 A Yes.

1 Q And that was accurate, too?

2 A Yes.

3 Q Thank you.

4 You then go on to identify various loans that the
5 plaintiffs are seeking repurchase of, correct, as a general
6 matter?

7 A Yes.

8 Q And if I may direct your attention, Mr. Trumpp, to
9 paragraph 31 of the declaration which is TRX-927. You state
10 there that accurate information regarding the borrower's
11 debts and especially the borrower's mortgage debts is
12 material to LBB's decision to purchase loans from
13 correspondent lenders such as Dream House. Do you see that?

14 A I do.

15 Q And that was an accurate statement when made?

16 A Yes.

17 Q And then you go on in paragraph 32, Mr. Trumpp, to
18 state, that:

19 "If a borrower misrepresents his or her mortgage
20 debts, that misrepresentation has a material and
21 adverse effect on the value of the loan because
22 the loan cannot be sold at full value to another
23 purchaser or to a securitization once the
24 misrepresentation is known. A substantial
25 discount will be applied given the

1 misrepresentation."

2 Do you see that, sir?

3 A I do.

4 Q And that was an accurate statement when made, was it
5 not, Mr. Trump?

6 A For the whole loans that were the subject of the -- of
7 this declaration, yes.

8 Q The statement we just read does not expressly refer to
9 or limit itself to a whole lot, does it, by its own express
10 language?

11 A No, but this particular matter was four whole loans.
12 And when we're talking about the purchase and sale
13 agreements between Aurora and their sellers, those were for
14 whole loan transactions.

15 Q Now you mean a whole loan -- you mean a loan that's not
16 in a securitization?

17 A That is correct.

18 Q Stand-alone mortgage agreement?

19 A They were generally sold as stand-alone mortgage loans
20 individually. Occasionally they would be pooled in what
21 were called mini-boat transactions, but for the most part
22 they were individual investments, non-securitized.

23 Q Now whole loans were pooled as you mentioned and also
24 master serviced, right?

25 A Aurora was the master servicer for LBB and LBHI's whole

1 loan portfolio.

2 Q So there was a portfolio of whole loans that LBB and
3 LBHI owned and Aurora master serviced those loans?

4 A Yes.

5 Q And it also master serviced loans that were pooled
6 together and placed into securitizations, correct?

7 A Yes.

8 Q And a whole loan is a mortgage loan, right?

9 A Yes.

10 Q And a loan in a securitization is a mortgage loan,
11 right?

12 A Yes.

13 Q And a whole loan has a borrower?

14 A Yes.

15 Q And a loan in a securitization has a borrower?

16 A It does.

17 Q And a whole loan has a collateral which is the subject
18 property, right?

19 A Yes.

20 Q And a loan in a securitization has collateral which is
21 the subject property, right?

22 A Yes.

23 Q A whole loan has a principal amount and so does a loan
24 -- a mortgage loan in a securitization, right?

25 A Yes.

1 Q A whole loan has an interest rate and so does a
2 mortgage loan in a securitization, right?

3 A Yes.

4 Q A whole loan has a mortgage note and so does a mortgage
5 loan in a securitization, right?

6 A Yes.

7 Q And there are many other characteristics that whole
8 loans have that mortgage loans in securitizations also have,
9 correct?

10 A Yes.

11 Q Mr. Trumpp, you state that once a misrepresentation is
12 known the loan cannot be sold at full value to a
13 securitization, correct?

14 A That's what I said.

15 Q And you say that a substantial discount will be applied
16 given the misrepresentation, correct?

17 A For a whole loan talking about the pricing at which it
18 could later be sold, if it was found to have a material
19 misrepresentation, yes.

20 Q Okay. So you're saying here that if a
21 misrepresentation was known on a whole loan it can't be put
22 into a securitization except at a lower price, right?

23 A Yes.

24 Q And a loan with a lower price as a result of the
25 misrepresentation is a loan with a lower value, right, Mr.

1 Trumpp?

2 A Yes.

3 Q Mr. Trumpp, where whole loans have misrepresentations
4 of debts there were instances where Lehman had to sell them
5 at substantial discounts, isn't that true?

6 A Yes.

7 Q And a discount off the price means the loan is worth
8 less, right?

9 A Yes.

10 Q It has a lower value?

11 A Yes.

12 Q And for that matter to the best of your knowledge
13 Aurora wouldn't even have made the loan to a borrower that
14 it knew had lied about income, debt or occupancy, right?

15 A Yes.

16 Q When Lehman put back loans to loan originators it
17 offered as an alternative to repurchase re-pricing of the
18 loan, correct?

19 A Yes.

20 Q Re-pricing means you would have said to the originator
21 instead of selling it to us at once price, we ask you to
22 give us a change in value to another price, correct?

23 A Yes.

24 Q And that change in price would be to a lower price,
25 right?

1 A It would have gone through a re-pricing process based
2 upon the defect and all of the facts and circumstances for
3 that particular loan. But, yes.

4 Q You wouldn't be paying a higher price for a loan with a
5 known defect?

6 A No.

7 Q Mr. Trumpp, let me direct your attention, sir, if I may
8 to paragraph 11 of your declaration. You state there that
9 attached hereto is Exhibit E and are true and correct copies
10 of demand letters that Aurora sent to Dream House on or
11 about the date shown on each letter. Do you see that?

12 (Pause)

13 A I do.

14 Q And Aurora sent those letters consistent with and
15 pursuant to the authority that you describe in paragraphs 5
16 through 7 of the declaration?

17 A They did.

18 Q I'm going to ask you, Mr. Trumpp, please to turn to
19 Exhibit E which is the exhibit that you reference in your
20 declaration.

21 MR. SHUSTER: Does the Court have the full exhibit
22 sets or a skinny down version of --

23 UNIDENTIFIED SPEAKER: A condensed version.

24 MR. SHUSTER: A condensed version. So in the
25 interest of not overburdening the Court --

1 THE COURT: Okay.

2 MR. SHUSTER: -- with paper, we've given the Court
3 the -- only the exhibits we intend to -- I intend to
4 question the witness about. We're, of course, happy to --

5 THE COURT: Okay.

6 MR. SHUSTER: -- provide --

7 THE COURT: Okay. So I'm in 927.

8 MR. SHUSTER: Yes. And it's Exhibit E. Counsel
9 has the complete exhibit and the witness has the complete
10 exhibit, 927.

11 THE COURT: So it's in 927(b)?

12 MR. SHUSTER: It's 927 --

13 UNIDENTIFIED SPEAKER: This one is marked
14 differently. It's 760, I believe.

15 MR. SHUSTER: It's 760.

16 THE COURT: I'm totally lost. So --

17 MR. COSENZA: Yeah. Your Honor -- Your Honor, I'm
18 totally -- I'm confused.

19 THE COURT: Yeah. Okay. We're --

20 MR. COSENZA: And I think this almost highlights
21 the objection I made initially --

22 THE COURT: Okay. Wait. Wait. Wait. Wait.
23 Time out.

24 MR. COSENZA: Yes.

25 THE COURT: Time out. Time out.

1 First, let me get to where the --

2 MR. COSENZA: Yes.

3 THE COURT: -- document is and then let's figure
4 out.

5 MR. COSENZA: Yes.

6 THE COURT: So where am I supposed to be?

7 UNIDENTIFIED SPEAKER: Your Honor, 760.

8 THE COURT: 760?

9 MR. SHUSTER: Oh, because the exhibit is marked as
10 a --

11 UNIDENTIFIED SPEAKER: It was separately marked --

12 MR. SHUSTER: Okay.

13 UNIDENTIFIED SPEAKER: -- earlier. So it -- I
14 think earlier today.

15 MR. SHUSTER: I see. The exhibit -- yes. The
16 exhibit that is attached to the declaration is marked as
17 TRX-760.

18 THE COURT: Okay. So now I'm back to here.

19 MR. SHUSTER: That might have happened in the
20 deposition.

21 (Pause)

22 THE COURT: Okay. So I'm in TRX-760. And I'm on
23 Exhibit E. Okay. SO --

24 MR. SHUSTER: And I think an objection is coming.

25 THE COURT: Okay.

1 MR. SHUSTER: Much to my disappointment.

2 THE COURT: I'm sorry. Wait. So where -- where
3 was -- the screen grab that went away, where was that from,
4 the demand letters?

5 MR. SHUSTER: That should have been from Exhibit
6 760, TRX --

7 (Pause)

8 THE COURT: Okay. All right. So I think we're
9 looking at demand letters to Dream House by Aurora; is that
10 right?

11 MR. SHUSTER: Yes, Your Honor.

12 THE COURT: Okay. Mr. Cosenza.

13 MR. COSENZA: Yeah. Your Honor, this highlights,
14 though, I think the problem I raised earlier. I now
15 understand what is trying to be accomplished. What I think
16 is trying to be accomplished is there's a declaration here -
17 - you know, we only have one exhibit to that declaration,
18 Exhibit B, that follows in the book. There's then in a
19 separate thing Exhibit I -- Exhibit E.

20 There are all sorts of exhibits that are missing
21 from this declaration and this declaration itself is
22 attached to something or some sort of motion. And this sort
23 of highlights, you know, what's being done here, getting one
24 snippet, one letter. It's not in the context of a full case
25 in order to get -- this is not the full file that's before

1 the Court and there's no convenience here because we do not
2 have the full declaration or the full document here.

3 So I don't -- it's just incomplete. It's
4 confusing. I think there is a -- you know, lots of
5 questions here about full --

6 THE COURT: Well, why don't you come --

7 MR. COSENZA: -- full loans.

8 THE COURT: -- why don't you come on up?

9 (At sidebar off the record)

10 THE COURT: Okay. All right.

11 BY MR. SHUSTER:

12 Q So, Mr. Trumpp, directing your attention to Exhibit E
13 and specifically to the page bearing production number ALS-
14 38 -- no. That doesn't help you. To the page at the
15 bottom, 31 of 33, TRX-760 page 31 of 33. So this is a
16 letter that you attached to your declaration from Ms. Burke,
17 Christina Burke, correct?

18 (Pause)

19 A Yes, it is.

20 Q Thank you.

21 And who was Ms. Burke?

22 A She was an employee of Aurora Loan Services.

23 Q She's identified here as a claims analyst in contract
24 administration?

25 A Yes.

1 Q Is that an accurate description of her title and
2 responsibilities?

3 A As I recall, yes.

4 Q So the letter is on Aurora Loan Service's letterhead
5 which identifies itself. It says, Aurora Loan Services, a
6 Lehman Brother's company, correct?

7 A Yes.

8 Q Dated August 17, 2007 addressed to Dream House Mortgage
9 Corporation, right?

10 A Yes.

11 Q Now the letter says in the second --

12 THE COURT: I'm sorry, Mr. Shuster, I hate to do
13 this to you.

14 MR. SHUSTER: Yeah. No. I know what Your Honor
15 is going to raise and we can take it off the screen. It was
16 already on the public docket.

17 THE COURT: Yeah. That doesn't --

18 MR. SHUSTER: But I hear you.

19 THE COURT: That doesn't --

20 MR. SHUSTER: No. I --

21 THE COURT: That doesn't help me.

22 MR. SHUSTER: That doesn't do it.

23 THE COURT: So let's take it off the screen.

24 MR. SHUSTER: Let's take it off the screen then.

25 (Pause)

1 MR. SHUSTER: It was the same thing at the same
2 time.

3 THE COURT: Yeah.

4 MR. SHUSTER: Okay. So --

5 THE COURT: You have the page before you, yes, Mr.
6 Trump?

7 THE WITNESS: I believe so.

8 THE COURT: Okay. Thank you.

9 BY MR. SHUSTER:

10 Q So the first paragraph references the agreements
11 between the parties, correct?

12 A Yes, it does.

13 Q And the second paragraph says, "As part of our quality
14 control efforts we periodically review selections of loans
15 purchased by Lehman to assure compliance with its purchase
16 requirements."

17 A Yes.

18 Q Right? And then it goes on to identify a
19 misrepresentation of debt claim that the letter asserts
20 violates representation and warranty in the seller's guide
21 that is incorporated, in fact, by reference into the loan
22 purchase agreements between Lehman and Dream House Mortgage,
23 correct?

24 A Yes.

25 Q Thank you, sir.

1 So under the heading, Mr. Trumpp, misrepresentation
2 debts it states that:

3 "Undisclosed debt on credit report. Credit report
4 shows six additional mortgages. Additional
5 mortgages equal \$14,811 a month. Using borrower
6 income of 45 -- 46,500 a month DTI would be 71 --
7 76.15 percent."

8 Do you see that?

9 A I do.

10 Q Did I read that right?

11 A Eventually, yes.

12 (Laughter)

13 Q Thank you, Mr. Trumpp.

14 So Aurora on behalf of Lehman was putting forward a
15 misrepresentation of debt claim predicated on a credit
16 report, correct?

17 A Yes.

18 Q And on that basis it was seeking repurchase of the
19 loan, correct?

20 A Yes.

21 Q And then it references the applicable representation
22 and warranty from the seller's guide, right?

23 A Yes, it does.

24 Q And the -- at the top of page 2, Mr. Trumpp, the letter
25 says:

1 "Because the loan did not meet Lehman's purchase
2 requirements we ask that you fulfill your
3 obligations pursuant to the agreement and seller's
4 guide and repurchase the loan within 30 days of
5 the date of the letter -- of this letter."

6 Do you see that, sir?

7 A I do.

8 Q And it goes on to say, "In certain circumstances as a
9 special courtesy to our correspondents" -- and just pausing
10 there for a second can you just explain the term
11 "correspondent"? You referred to it earlier.

12 A Yes. Aurora had essentially two main reasons or two
13 main ways they got loans. One was through a network of
14 brokers and that was called wholesale funding, and what it
15 meant was Aurora funded the loan, underwrote the loan, et
16 cetera. And they used brokers to find the loan -- the
17 borrowers.

18 Opposite of that they had a correspondent program and
19 the correspondent program meant they had other parties that
20 had already gone through the process of funding a mortgage
21 loan, and it's those closed loans that were then later sold
22 to Lehman Brothers Bank, technically, under the purchase and
23 sales agreement between LBB and the correspondent, and was
24 governed by the -- that purchase agreement and the seller's
25 guide.

1 So the correspondents were selling whole closed loans
2 to LBB.

3 Q And the loans that are in the securitizations here, the
4 Aurora loans that is to say that are in the securitizations
5 at issue here would have come through one of those two
6 channels?

7 A Yes. There was also, just to be clear there was a
8 third way. It was very small in volume, but they had a
9 retail business meaning Aurora sourced their own borrowers
10 and funded their own loans and not used -- didn't use
11 brokers. So in any one of those three ways that's how the
12 Aurora loans ultimately got up to Lehman.

13 Q Incidentally a large number of the loans here were also
14 originated by BNC which was also a Lehman affiliated
15 company; is that right?

16 A Yeah. so separate and apart from Aurora Lehman had a
17 subprime mortgage company called BNC Mortgage and that was a
18 separate corporate entity.

19 Q Thank you, Mr. Trumpp.

20 So going back to the top of page 2 it says that:

21 "Because the loan did not meet Lehman's re-
22 purchase requirements we ask that you fulfill your
23 obligations pursuant to the agreement and seller's
24 guide and re-purchase the loan within 30 days of
25 the date of this letter."

1 It goes on to say:

2 "In certain circumstances as a special courtesy to
3 our correspondents Lehman may permit you to pursue
4 alternatives to re-purchase including cure within
5 reasonable time period, indemnification or re-
6 pricing of the loan," right?

7 A Yes.

8 Q And then it goes on to say in the next paragraph:

9 "We ask that you review the loan along with our
10 findings to determine whether you can cure the
11 above-referenced defect or provide evidence to
12 refute our findings."

13 "Provide evidence to refute our findings," right?

14 A Yes.

15 Q And it says:

16 "If you are unable to cure the defect or cannot
17 provide sufficient evidence to refute our findings
18 within 30 days Lehman will require that you
19 fulfill your obligations pursuant to the agreement
20 in the seller's guide and re-purchase the loan,"
21 right?

22 A Yes.

23 Q Just as a point, you can't cure a misrepresentation of
24 debts, right, by the borrower?

25 A So assuming that it is true that the borrower did, in

1 fact, misrepresent their debts, no, you cannot cure that.

2 Q Let me direct your attention if I may, Mr. Trumpp, to
3 TRX-730 -- no, no, not that one. It's in a different
4 binder.

5 UNIDENTIFIED SPEAKER: 929?

6 MR. SHUSTER: TRX-929.

7 (Pause)

8 THE WITNESS: Will I need to go back to this?

9 Thank you.

10 BY MR. SHUSTER:

11 Q And if I could ask you to verify, Mr. Trumpp, that
12 that's your signature on TRX-929 and that you stated there
13 that you declare under penalty of perjury under the laws of
14 the United States that the foregoing is true and correct,
15 yes?

16 A Sorry. I'm just reading the document.

17 (Pause)

18 A Okay. Can you repeat your question, please?

19 Q Yes. That's your signature on the document?

20 A Yes, it is.

21 Q You declared under penalty and (sic) perjury that the
22 foregoing was true and correct --

23 A Yes.

24 Q -- yes?

25 A Yes.

1 Q And that was dated the 13th day of September 2010,
2 correct?

3 A Yes.

4 Q And the affidavit was submitted in Lehman Brothers
5 Holdings Inc. v Mortgage Partners Inc., right?

6 A Yes.

7 Q And you -- there are two law firms representing Lehman
8 there and one of them identifies my friend, Mr. Rollin, as
9 counsel?

10 A Yes, it does.

11 Q And then, Mr. Trumpp, if I could direct your attention,
12 please, to paragraph -- paragraphs 5 through 9 of the
13 document that has language similar to the language we saw in
14 the earlier declaration which is that -- well, let me start
15 with that general question.

16 A I'm sorry. Can you repeat that question, I guess?

17 Q Let's do it this way. Paragraph 5 says that Aurora is
18 the authorized agent/servicer and a master servicer for LBB
19 and LBHI?

20 A Yes, it does.

21 Q And paragraph 6 says it's authorized and directed by
22 them to enforce any obligations owed to them by parties
23 selling mortgage loans in which they have an interest?

24 A Yes, it does.

25 Q And paragraph 7 says that Aurora also served as the

1 administrative agent of the conduit or correspondent program
2 for LBB?

3 A Yes.

4 Q That's the program you described a moment ago?

5 A Correct.

6 Q And paragraph 8 says that as the administrative agent
7 Aurora performed post-purchase audits of various loan files
8 in the event of a possible breach of a representation,
9 warranty or covenant, right?

10 A Yes.

11 Q And then it says that attached hereto as exhibit -- in
12 paragraph 12 attached hereto is Exhibit E is a true and
13 correct copy of the demand letter relating to the matters at
14 issue in your declaration, correct?

15 A Yes.

16 Q And all -- Exhibit E is an attachment and -- but it's
17 separately denoted as TRX-1375.

18 (Pause)

19 Q Do you have that, sir?

20 A I don't believe so. I'm going to apologize in advance
21 if this falls.

22 Q Let's take them down so they don't and we apologize to
23 you for inundating you with paper.

24 THE COURT: I have it.

25 MR. SHUSTER: Okay. Oh, it's page -- well, it's

1 the only letter as it happens in exhibit --

2 THE COURT: Let's not put this one up on the
3 screen.

4 UNIDENTIFIED SPEAKER: Yeah. It's --

5 MR. SHUSTER: Yes. Let's not put this one up.
6 Let's not -- we don't need to put any of these on the
7 screen, I think.

8 BY MR. SHUSTER:

9 Q So are you with me at least at the letter, sir?

10 A Yes. And did I understand you correctly that there's
11 only one demand letter in Exhibit E?

12 Q Yes. That's correct. And I'll just note for you, so
13 you don't have to take my say so, that paragraph 12 of your
14 declaration refers to the demand letter in the singular.

15 A Thank you.

16 Q So this is similar to the demand letter from Ms. Burke
17 we saw a moment ago attached to a different -- oh, wait.
18 I've skipped the good part. Let's do the demand letter,
19 then I'll go back to the declaration.

20 This is similar to the letter we saw earlier from Ms.
21 Burke, correct?

22 A Similar in that it's a demand letter sent on behalf of
23 a loan from Aurora.

24 Q Right. So let me direct your attention -- well, so
25 it's -- it's got this -- it's on the same letterhead. It's

1 dated March 6th, 2008. It's directed to Mortgage Partners.

2 It -- and it -- and it is identified as coming from Ms.

3 Water (ph), correct?

4 A Yes. And it's got a different loan --

5 Q Yes.

6 A -- and a different issue.

7 Q Of course. And the issue that it identifies is

8 misrepresentation employment and it states, "The borrower

9 indicated on the 1003 that he has been employed as a diesel

10 mechanic/supervisor for J&R Fleet Services for three years."

11 Do you see that, sir?

12 A I do.

13 Q And the reference to 1003 refers to the loan

14 application?

15 A Yes.

16 Q And then it says, "the auditor." That would be the

17 quality control auditor at Aurora, right?

18 A Presumably, but I don't know.

19 Q "Verified the borrower's employment with Rubin in HR at

20 J&R Fleet Services at 909-429-1777 who verified that the

21 borrower is currently employed as a diesel mechanic. Rubin

22 stated that the borrower was not a supervisor." Do you see

23 that?

24 A I do.

25 Q And then it -- by the way, there are audit verification

1 of employments that the trustees rely upon in whole or part
2 to certain -- to establish certain claims here?

3 A That was one of the types of evidence we saw put forth
4 by the --

5 Q Thank you.

6 A -- trustees.

7 Q and I should have asked you the same earlier with
8 respect to the credit report as a type of evidence. That's
9 a type of evidence the trustees rely upon in whole or part
10 to attempt to establish misrepresentation of debt breaches?

11 A Yes. We also saw it on the credit reports.

12 Q Thank you.

13 So it then goes on to say that the income stated on the
14 1003 is \$9,852. Research using salary.com indicates that
15 the high end salary for a diesel mechanic in Fontana,
16 California is \$58,748 per year or \$4,896 per month.

17 Salary.com is a database similar to the Bureau of Labor
18 statistics database?

19 A It's an online database that has averages for positions
20 of employment and wages.

21 Q And Aurora was relying on this in part to establish a
22 breach, correct?

23 A In part in their initial demand letter that was one of
24 the pieces of evidence that they referred to.

25 Q Uh-huh. And on the -- and they use the Salary.com

1 information to recalculate DTI, correct?

2 A They do.

3 Q And then it has the same language that we saw earlier
4 about re-pricing the loan and evidence -- and evidence to
5 refute the findings?

6 A Yes.

7 Q Okay. Let's go back, Mr. Trumpp, to the declaration.
8 At paragraph 16 of the declaration -- that's my bad for
9 making a shuffle back and forth.

10 At paragraph 16 of the declaration you state that it --
11 oh, sorry, 15:

12 "Information regarding the borrower's monthly
13 income and employment position are material to
14 LBB's decision to purchase loans from
15 correspondent lenders such as Mortgage Partners."

16 Do you see that, sir?

17 A I do.

18 Q That statement was true when made?

19 A Yes.

20 Q You go on to say:

21 "If a borrower misrepresents his income on his
22 loan application and/or employment position, those
23 misrepresentations have a material and adverse
24 effect on the value of the loan because the loan
25 cannot be sold at full value to another purchaser

1 or to a securitization once a misrepresentation is
2 known. A substantial discount will be applied
3 given the misrepresentation."

4 Do you see that?

5 A I do.

6 Q That's a nearly identical formulation to the one we saw
7 earlier in your other declaration except this one relates to
8 income and employment and the other one related to mortgage
9 debt, correct?

10 A They are similar with that exception. Yes.

11 Q Thank you, sir.

12 MR. SHUSTER: Okay.

13 THE COURT: Stopping point?

14 MR. SHUSTER: I think so and --

15 THE COURT: Okay.

16 MR. SHUSTER: -- I would respectfully request a
17 little bit of a longer lunch if the Court is amenable.

18 THE COURT: Sure.

19 MR. SHUSTER: I -- maybe an hour and a quarter, an
20 hour and a half.

21 MR. COZENZA: Your Honor, we have no issue with
22 that. I just want to make sure we're on track to finish the
23 cross today with that break.

24 MR. SHUSTER: I -- that is my --

25 THE COURT: Is the longer break in the service of

1 trying to finish earlier?

2 MR. SHUSTER: I'm trying to be efficient.

3 MR. COSENZA: Okay.

4 THE COURT: Yeah. Okay.

5 MR. SHUSTER: So that is my --

6 MR. COSENZA: That would be --

7 MR. SHUSTER: I don't want to conclusively --

8 MR. COSENZA: Yes.

9 MR. SHUSTER: -- represent that, but it's my
10 intention --

11 MR. COSENZA: And we're --

12 MR. SHUSTER: -- and hope ==

13 MR. COSENZA: And we're fine with that, Your
14 Honor.

15 MR. SHUSTER: -- and expectation.

16 THE COURT: Okay. So on a -- for our part we'll
17 check to see what kind of coverage we can get for the end of
18 the day so that, if necessary, you know, we can push to a
19 little bit after 5:30, 6:00 if that does it --

20 MR. SHUSTER: Thank you.

21 THE COURT: -- to get us there.

22 MR. SHUSTER: Thank you.

23 THE COURT: Okay. All right. So --

24 MR. COSENZA: Sounds good. Thank you.

25 THE COURT: -- why don't we -- do you want to call

1 it -- it's five minutes after one. Do you want to come back
2 at --

3 MR. SHUSTER: 2:30.

4 THE COURT: -- 2:30?

5 MR. SHUSTER: Yes. Please.

6 THE COURT: Okay.

7 MR. SHUSTER: Thanks so much.

8 THE COURT: All right.

9 MR. SHUSTER: Thank you.

10 THE COURT: All right, Mr. Trumpp. Thank you.

11 We'll see you at 2:30.

12 (Recess at 12:55 p.m.; reconvened at 2:35 p.m.)

13 THE COURT: Have a seat. All set?

14 MR. SHUSTER: Yes. Thank you, Your Honor.

15 THE COURT: You've gotten your examination down to
16 three questions now, right?

17 (Laughter)

18 MR. SHUSTER: Okay.

19 THE COURT: Okay, Mr. Shuster, ready when you are.

20 MR. SHUSTER: Thank you, Your Honor.

21 THE COURT: Okay.

22 BY MR. SHUSTER:

23 Q Mr. Trumpp, permit me to direct your attention to
24 TRX-933.

25 A Thank you.

1 (Pause)

2 THE COURT: 933.

3 (Pause)

4 BY MR. SHUSTER:

5 Q That's a declaration, sir, that you signed and swore to
6 under penalty of perjury on March 16, 2010 in Denver,
7 Colorado?

8 A Yes.

9 Q That's your signature on page 6 of the document?

10 A It is.

11 Q And this was submitted in Lehman Brothers Holdings Inc.
12 v. Belvidere Networking Enterprises?

13 A Yes.

14 Q Let me direct your attention, Mr. Trumpp, if I could,
15 to paragraph 11, please.

16 (Pause)

17 Q So let me direct -- did I just direct your attention to
18 paragraph 11, sir?

19 A You did.

20 Q Thank you.

21 And that -- there you refer to certain repurchase
22 demand letters you sent to -- Aurora sent to Belvidere that
23 are attached as Exhibit F, correct?

24 A That's what it says, yes.

25 Q And would you please turn to that portion of the

1 document, which is Exhibit 933F -- TRX-933F. And I'm going
2 to direct your attention, there's several pages there, I'm
3 going to direct your attention to the third to last page.
4 Not that one, but the next one. It's a two-page --

5 THE COURT: The footer is 43 of 46. Okay?

6 MR. SHUSTER: So we see the -- so we have to take
7 it off the screen because we've got the borrower's name.

8 BY MR. SHUSTER:

9 Q So, Mr. Trump, in this document this is a letter from
10 you to Belvidere Networking Enterprises dated October 20,
11 2009, correct?

12 THE COURT: Sorry. So we're on -- we should be on
13 44 of 46, right?

14 MR. SHUSTER: I'm going to say yes, even though I
15 don't have those page numbers, but you should be -- yes,
16 because you're -- the third page --

17 THE COURT: The date.

18 MR. SHUSTER: October 20, 2009.

19 THE COURT: 22 or 20?

20 MR. SHUSTER: No, 20.

21 THE COURT: Right. So it's --

22 MR. SHUSTER: And it's a two-page letter from
23 Mr. Trump and then --

24 THE COURT: Yes. To Belvidere.

25 MR. SHUSTER: Yes.

1 THE COURT: Yes, that's the one. So that's 44 of
2 46 in my binder.

3 MR. SHUSTER: Yes.

4 THE WITNESS: Thank you for clarifying, I was on
5 the wrong page.

6 THE COURT: Okay?

7 MR. SHUSTER: That was in mine too, I just missed
8 it. Yep. Thank you, Your Honor.

9 THE COURT: Okay. Sure. No problem.

10 THE WITNESS: Thank you.

11 MR. SHUSTER: Okay.

12 THE COURT: All right.

13 BY MR. SHUSTER:

14 Q So that's -- we've just identified that.

15 So there there's -- you reference a misrepresentation
16 of occupancy, and what you relied on there for that
17 misrepresentation of occupancy includes an Accurant people
18 search, correct?

19 A That was one of the sources of the claim evidence, yes.

20 Q And if you turn to page 43, Mr. Trumpp, which is the
21 prior page, there is reference there to a schedule. It's a
22 letter from you to Belvidere attaching a schedule. And I
23 believe that that schedule is the last page of the exhibit.
24 You see that schedule?

25 A Is that what's on 46?

1 Q Yes.

2 MR. SHUSTER: I think that we can put up as an
3 exhibit and we can hopefully blow that up.

4 THE WITNESS: That would be helpful, because I --

5 MR. SHUSTER: Yeah.

6 THE WITNESS: -- see the page.

7 MR. SHUSTER: Yes. I have my good glasses on so I
8 can read it, but I'm sympathetic. So can we blow up the --
9 this column here? The one that has text in every box?
10 Otherwise I can put it on the Elmo. All right. But they
11 don't all have to show it once if that helps.

12 BY MR. SHUSTER:

13 Q So there the schedule identifies claim descriptions,
14 and the first one relies on LexisNexis, correct? Can you
15 see that?

16 A I'm trying. I do see what was highlighted on the
17 screen, yes.

18 Q And the next one relies on a credit report -- an audit
19 credit report? Third line.

20 A Yes, I see that too.

21 Q And the next one, Mr. Trump, relies on Salary.com and
22 BLS data. Do you see that?

23 A I'm looking. I do see what you've highlighted and I do
24 see that that is one of the sources cited for proof.

25 Q Thank you, sir.

1 And the next one down references an Accurint search
2 again, correct?

3 A Yes. An Accurint people search report was use as one
4 of the two sources of evidence --

5 Q Yes.

6 A -- citing these.

7 Q Let me -- I'm going to go to TRX-733 -- 732, my
8 apologies.

9 (Pause)

10 Q And that's also one of your declarations that's dated
11 March 2009, and that's your signature there?

12 A Yes, it is.

13 Q And that was submitted in Aurora Loan Services and
14 Lehman Brothers Holdings, the NBGI, correct?

15 A Yes.

16 Q So -- and that declaration, Mr. Trumpp, references --
17 well let me just direct your attention to 732E, which is at
18 tab E, which is the demand letters that are attached to the
19 declaration.

20 (Pause)

21 A Is there a particular page in these demand letters --

22 Q Yes.

23 A -- that you want me to look at?

24 Q It's page --

25 A There's quite a few.

1 Q -- if you go all the -- it's actually the last page in
2 the exhibit, that's the best way to -- that's a letter from
3 Patricia Rocker (ph) on Aurora Loan Services' letterhead to
4 NBGI, correct?

5 A Yes, it is.

6 Q And that letter shows a misrepresentation of occupancy
7 claims supported by an Accurint.com people search?

8 A Accurint was one of the two sources of evidence used in
9 this particular demand letter.

10 Q The other one is a (indiscernible - 12:59) to verify
11 employment, correct?

12 A Yes.

13 Q Okay. Let me direct your attention, Mr. Trumpp, to
14 TRX-733.

15 (Pause)

16 Q And that's a declaration that you swore to under
17 penalty of perjury on June 29, 2009 in Scottsbluff, Arizona?

18 A Nebraska actually.

19 Q Sorry. Did I say Arizona? Yep, Nebraska. My bad. My
20 apologies. So that -- I note the law firm Fir (ph) on the
21 bottom left there, on the first page of that document, sir?

22 A Yes.

23 Q Again, that's my colleague, Mr. Rollin's firm, right?

24 A At the time, yes.

25 Q Yes. And then -- but permit me to -- and the paragraph

1 9 of the declaration refers to demand letters at Exhibit F.
2 And Exhibit F is TRX-734. If you could go to page 17, sir,
3 of 23, please. Once again we get no points for legibility,
4 but this is the way we got it off the public docket. So
5 that's a letter from Sean Kilmurray, a claims analyst and
6 contract administration at Aurora Loan Services dated
7 July 28, 2007 to Irez Co. (ph). Yes?

8 A I'm reading the letter. Yes, this is a demand letter
9 sent by Sean Kilmurray on Aurora letterhead.

10 Q Thank you, sir. So there is a reference to
11 misrepresentation of employment and income?

12 A Yes.

13 Q And the information that's put forward there is the
14 borrower's bankruptcy filing reflecting the borrower's
15 monthly income, correct?

16 (Pause)

17 THE COURT: Rather interesting change of careers
18 this borrower has don't you think?

19 MR. SHUSTER: Indeed.

20 THE WITNESS: Yes, I see the reference to the
21 bankruptcy filing.

22 BY MR. SHUSTER:

23 Q And no other documentary evidence at least is cited to
24 in that letter, correct?

25 A In the initial demand letter, no.

1 Q Mr. Trumpp, let me direct your attention to TRX-716,
2 please.

3 (Pause)

4 Q And TRX-716 is a declaration sworn to by you under
5 penalty of perjury dated March 11th, 2010 in Lehman Brothers
6 Holdings Inc. v. T. Financial Corporation?

7 A It is.

8 Q And there -- if you turn to page 6 of the declaration,
9 sir, it refers to what it describes as a breach of
10 representation and warranty loan?

11 A I'm sorry, where on page 6 are you looking?

12 Q The heading at the top towards --

13 A Oh, in the big bold letters at the top?

14 Q Yes.

15 A Yes, I see that.

16 Q Thank you, sir.

17 And then there's a reference in paragraph 29 for the
18 borrower's failure to disclose a significant mortgage debt;
19 isn't that right?

20 (Pause)

21 Q You with me?

22 A Yes, I was just taking a second to read it. I see it.

23 Q Okay. Thank you.

24 And then there's a heading for another loan on page 7
25 called the -- well another loan on page 7.

1 MR. SHUSTER: We don't need to have that on the
2 screen.

3 THE WITNESS: I see page 7.

4 BY MR. SHUSTER:

5 Q And in paragraph 35 it says:

6 "Information regarding the borrower's employment
7 is material to LBB's decision to purchase loans from
8 the correspondent lenders such as Key Financial."

9 You see that?

10 A Yes, I do.

11 Q That statement was true when you made it?

12 A It was.

13 Q And on paragraph 36 says:

14 "Information regarding a borrower's income and
15 ability to repay the debt is material to LBB's decision
16 to purchase loans from correspondent lenders such as
17 Key Financial."

18 And that statement too was true when you made it,
19 correct?

20 A It was.

21 Q If you turn to paragraph 45 of the document you'll see
22 there's a reference to W-2s and tax transcripts, revealing
23 the borrower's employer. You see that?

24 (Pause)

25 A I'm sorry, can you repeat your question, please.

1 Q There's a reference in paragraph 45 to evidence in the
2 form of W-2s and tax transcripts relating to the borrower's
3 employment, correct?

4 A I do.

5 Q Now, let me direct your attention -- oh, and finally in
6 paragraph 47 there's a statement that any one of these red
7 flags was more than sufficient for LBB to decline to
8 purchase this loan. See that?

9 A Yeah. So --

10 Q No, I'm just asking if you see that it's there.

11 A I do see that and I believe in this case this wasn't a
12 repurchase case, this was an instance where we were not
13 agreeing to purchase a loan.

14 Q You were declining to purchase the loan?

15 A Correct.

16 Q The -- then if you turn, Mr. Trumpp, to Exhibit F,
17 which is Exhibit 716F. You'll see there, Mr. Trumpp, that's
18 a letter from you dated July 10, 2009 to Key Financial
19 Corporation?

20 A There's two letters here, so I assume we're talking
21 about the one on page 4?

22 Q I'm talking on the one -- yes, the one on page 4. And
23 there it refers to misrepresentation of debts and it says in
24 the third sentence, "Based on online research it has been
25 determined that the borrower had an undisclosed debt at the

1 time of closing." Do you see that?

2 A I do.

3 Q What online research were you referring to there in
4 your letter?

5 A So you're asking me to remember the facts and
6 circumstances from a loan and demand letter that I sent in
7 2009?

8 Q Doesn't surprise me that you can't. What online
9 resources did Aurora use at that time to verify mortgage
10 debt?

11 A As I sit here today I'm not sure I recall what other
12 online sources they would have used at that point in time.

13 Q Do you know what types of online resources are
14 available for purposes of establishing mortgage debt?

15 THE COURT: I'm going to ask for clarification.
16 Does he know now what resources were available then or does
17 he know now what resources are available now? Your question
18 was do you know.

19 MR. SHUSTER: Yes. I'd actually like answers to
20 both questions.

21 BY MR. SHUSTER:

22 Q So do you know now what was available then?

23 A I don't recall or remember what was available then.

24 Q Do you know what's available now by way of online
25 resources through identifying --

1 A I can't think of any that we're using today in any of
2 our downstream claims or reviewed in this process.

3 Q Can I direct your attention, Mr. Trumpp, to -- thank
4 you -- to Exhibit I, which is 716I? Do you have that before
5 you, sir?

6 A I do.

7 Q Can you identify that document, Mr. Trumpp, please.

8 A This looks like a type of a form that contract admin
9 would have received when they were getting notice of loans
10 with potential defects from quality control.

11 Q So -- and it's -- thank you.

12 It's headed special investigations repurchase referral
13 form. Do you see that?

14 A I do.

15 Q And it provides investor detail, which is redacted
16 here, and it states that the loan status is current,
17 correct?

18 A Yes.

19 Q So was Lehman or Aurora on behalf of Lehman seeking
20 repurchase as to a current loan there?

21 A So as things worked back then they would -- contract
22 admin would receive a repurchase request -- or I shouldn't
23 say a repurchase request -- but they called this a
24 repurchase request referral form, but it was just simply a
25 notice within Aurora to contract admin saying here's a loan

1 that we think has a potential problem and they would use
2 this form to submit it to contract admin for review.
3 Contract admin would assess the information similar to
4 what's on this page against the representations and
5 warranties in the purchase and sale agreements and then
6 determine whether there was a breach of a representation or
7 warranty and seek repurchase.

8 I don't recall today where this came from. Obviously
9 it's part of this package, so I don't know the whole story
10 and facts and circumstances of this particular loan, nor do
11 I know the point in time that this was pulled relative to
12 the time that contract admin ultimately sought repurchase.

13 So I can infer that at the time that this form was made
14 the loan was current, but ultimately the performance prior
15 to that and the performance after that I don't know.

16 Q Thank you. So I have one more declaration. It's
17 TRX-717, and it's not a Trumpp declaration.

18 THE COURT: TRX?

19 MR. SHUSTER: 717. 717, yes.

20 MR. COSENZA: Your Honor?

21 THE COURT: Yes.

22 MR. COSENZA: For a moment. This is not a Trumpp
23 declaration. He can start the questions on this but I want
24 to lay an objection.

25 THE COURT: Okay. You're going to lay some

1 foundation?

2 MR. SHUSTER: Yeah. I'm going to get the
3 declaration in, I'll point to a foundation for doing so in
4 the text of it. I'm going to put the key language I want in
5 the record, not really going to ask the witness to comment.

6 THE COURT: Why would we do that?

7 MR. SHUSTER: Well I want to get this declaration
8 --

9 THE COURT: Yes, you do want to get it in, but the
10 question is on what basis should this declaration come in?

11 MR. SHUSTER: Well the declarant says, "I am a
12 corporate representative of LBHI, and LBHI has authorized me
13 to make this declaration." So --

14 THE COURT: Okay.

15 MR. SHUSTER: -- on that basis alone I think
16 it's --

17 THE COURT: So let's just take this a piece at a
18 time. So, Mr. Cosenza, do you have an objection? An
19 admissibility objection?

20 MR. COSENZA: I do, Your Honor, because I don't
21 know for what purpose this is being admitted. This is not
22 something that Mr. Trump is familiar with. I don't know
23 what purpose this is being offered.

24 You know, if there's a proffer for why -- how this
25 is admissible he can deal with it in due course we would

1 deal with the admissibility of documents.

2 THE COURT: Well it's a -- I mean not -- just to
3 try to move things along. I mean it's a -- it appears to be
4 a document that was filed on a public docket, so I can take
5 judicial of it as a filed document.

6 MR. COSENZA: Correct.

7 THE COURT: Beyond that nothing.

8 MR. COSENZA: I'm fine with that, Your Honor.

9 MR. SHUSTER: Well it's --

10 THE COURT: So --

11 MR. SHUSTER: Your Honor, I'm hoping to improve on
12 nothing, but not necessarily via the witness. The --

13 THE COURT: But that's the point, that's the
14 discussion we had before, right?

15 MR. SHUSTER: Well I would had we not had that
16 discussion.

17 THE COURT: I'm sorry?

18 MR. SHUSTER: I would try to explore with the
19 witness had we not had the discussion, but I understand the
20 parameters.

21 THE COURT: Okay. If you can lay a foundation for
22 asking the witness questions about the document by all
23 means. So I'm happy to give you that opportunity. If you
24 know that that's not going to yield anything then --

25 MR. SHUSTER: I don't. I don't think I examined

1 on this in his deposition.

2 THE COURT: Okay. Well you can do what it is that
3 you think that you should do.

4 MR. SHUSTER: Yes. Okay.

5 THE COURT: Okay?

6 MR. SHUSTER: All right.

7 BY MR. SHUSTER:

8 Q So who's John Baker?

9 A An individual who works for the plan administrator.

10 Q And he -- this -- was this part of the litigation
11 incidentally that you talked about yesterday that you
12 oversee?

13 A It was.

14 Q So would you have seen this document in the ordinary
15 course of business or been aware of it ever being filed?

16 A Yes.

17 Q And it was filed again by my esteemed colleague on the
18 other side, correct?

19 A Yes.

20 Q And as I read into the record in paragraph 2 Mr. Baker
21 says, "I'm the corporate representative of LBHI, and LBHI
22 has authorized me to make this declaration." Right?

23 A Yes.

24 Q And that was a true statement?

25 A It was.

1 Q I want to direct your attention to -- well and do you
2 recognize Mr. Baker's signature on page 23?

3 A I do.

4 Q I'm going to just ask you questions about paragraph 30
5 of the document.

6 (Pause)

7 THE COURT: I think in fairness, Mr. Shuster,
8 Mr. Trumpp ought to begin with the proceeding paragraph,
9 because it begins with the words, "Among the reasons for
10 this," and there's no way to tell what the this is. Don't
11 you think?

12 MR. SHUSTER: Sure. Yes.

13 THE COURT: Right? "Among the reasons for this."

14 MR. SHUSTER: Yes.

15 THE COURT: So we don't know what the this is.

16 MR. SHUSTER: Yes.

17 BY MR. SHUSTER:

18 Q So please do, Mr. Trumpp, if you would, look at
19 paragraph 29.

20 (Pause)

21 Q And I'll have some questions for you when you're ready.

22 (Pause)

23 Q I'm not going to ask you questions about the exhibits,
24 just so you know.

25 A Can I look at the --

1 Q Oh, of course.

2 A -- demand letters associated with this so I can know
3 what the occupancy --

4 Q Sure.

5 A -- breach is that they're referring to?

6 (Pause)

7 A Okay.

8 Q So I just want to ask you whether -- paragraph 29,
9 information regarding the borrower's intention to occupy the
10 property securing the mortgage loan is material to LBB's
11 decision to purchase loans from correspondent lenders such
12 as BMC. That was consistent with your understanding?

13 A Yes.

14 Q And the next statement that one of the reasons for this
15 in paragraph 30 is that certain mortgage loans or mortgage
16 terms are available only to borrowers who intend to occupy
17 the property secured by the mortgage as their primary
18 residence. That statement was also -- is also consistent
19 with your understanding at the time?

20 A It is.

21 Q And the next one that says:

22 "If a borrower misrepresents his or her intention
23 to occupy -- to so occupy the property securing the
24 mortgage loan that misrepresentation has a material and
25 adverse effect on the value of the loan because the

1 loan cannot be sold at full value to another purchaser
2 or to a securitization once a misrepresentation is
3 known."

4 That was consistent with the plan administrator's
5 position at the time, correct?

6 A That's what it says, yes.

7 Q Done with declarations. Move on to policies and
8 procedures.

9 I'd like to direct your attention, Mr. Trumpp, to TRX-
10 701.

11 MS. BRASWELL: Your Honor?

12 THE COURT: Yes.

13 MS. BRASWELL: Before we get into this line of
14 questioning I just want to interpose the same objection I
15 made earlier with respect to policies and procedures, we
16 don't think they're relevant and we don't think Mr. Trumpp
17 should be questioned on them.

18 THE COURT: All right. Well I suppose it's going
19 to depend on the dates of the policies and procedures that
20 we're talking about. I hear your objection, but I'm going
21 give Mr. Shuster some leeway on this. All right?

22 MS. BRASWELL: And, Your Honor, just to point to
23 the exhibit number that Mr. Shuster just pointed out, it's
24 TRX-701, and it's dated 2012. These are Aurora policies and
25 procedures in 2012.

1 THE COURT: Well I hear you, let's see what
2 happens next. All right?

3 BY MR. SHUSTER:

4 Q Mr. Trumpp, TRX-701 is similar to policies and
5 procedures that were in place when you were at Aurora
6 managing loss management; is that correct?

7 (Pause)

8 A So when I was in loss management we had policies and
9 procedures, and these look somewhat similar in concept to
10 the policies and procedures I had when I managed loss
11 management up until 2008, but like all things, you know,
12 things evolve and change over the course of time, so I've
13 not done the thorough read and comparison between what we
14 would have used in 2008 and beyond -- or earlier, excuse me
15 -- to what it says here.

16 Q Fair enough. So let's see how we do. Let me direct
17 your attention, Mr. Trumpp, to the second page of the
18 document, bearing production number LBHI 4239. Oh, I'm
19 sorry, I got ahead of myself. Page 4327 is the second page.
20 And there's a description there of what the asset risk
21 management department does. Is that consistent with what it
22 did at the time that you were at Aurora?

23 A It looks fairly familiar.

24 Q And then can I direct your attention to the -- page
25 4239 audit process, Section 3.1, full review, and it

1 discusses -- it says:

2

3 "A full review requires at minimum the following
4 documents to be reviewed and verification obtained to
5 support the information submitted at the time that
6 application was accurate."

7 You see that?

8 A I do.

9 Q And then it references certain documents and items of
10 information to be reviewed, including employment and income,
11 correct?

12 A Yes.

13 Q And then credit report?

14 A Yes.

15 Q Which it says is to be compared to the due diligent
16 credit report for the undisclosed debt, right?

17 A Yes.

18 Q And then there's a reference to the appraisal and to
19 the HUD-1?

20 A I'm sorry, where do you see that?

21 Q I'm sorry, it's a few items down from the top.

22 A Yes.

23 Q And then there's a heading, additional documentation,
24 if available, right?

25 A Yes.

1 Q And that's a reference to servicing loans?

2 A It is.

3 Q Now, please turn, if you would, to the page bearing
4 production number 4247, and you'll see there that certain
5 resources are identified to verify and review the
6 information on the loan file. Do you see that?

7 A No, where exactly are we looking?

8 Q Under 3.5, loan application.

9 A Oh, okay.

10 Q On page --

11 A Yep.

12 Q -- 4247. Talks about the steps that the quality
13 control auditor takes to verify the information in the loan
14 application, correct?

15 A That's what it says, yes.

16 Q And in step two of two it refers to checking Accurint
17 and LexisNexis for certain information?

18 A Yes, that's what it says.

19 Q And step three says that a comprehensive report on the
20 borrower should be pulled in Accurint?

21 A It does.

22 Q And in step four -- step two of step four there's a
23 reference to confirming the borrower occupancy via Accurint,
24 correct?

25 A That was one of the sources for looking for occupancy,

1 yes.

2 Q And then if you could turn, Mr. Trumpp, to the next
3 page, 4249, Section 3.6, employment and income. Do you see
4 that step one says, "Review the pay statements, tax returns,
5 and the W-2s"?

6 A Yes, I see that.

7 Q And then if you turn -- if you look at the next page
8 the box on the bottom, action, it refers to check certain
9 resources for more information, and that includes -- those
10 include the work number in the third bullet point there?

11 A Yes.

12 Q I want to direct your attention, Mr. Trumpp, if I
13 could, to Section 3.10 on page 4252. 3.10, credit report.
14 And you'll see in step two in the action box, the fourth
15 bullet it states -- it says that -- "verify the following,
16 are there inquiries from other mortgage lenders on the
17 lender's credit report resulting in additional mortgage debt
18 after the subject loan closes." Do you see that?

19 A I do.

20 Q You don't have an understanding as to why that
21 particular reference is there do you?

22 A Looks like one of the many steps of going through a
23 loan review.

24 Q Okay. That's it for that document.

25 I want to turn to one other policies and procedures

1 document, sir, which is TRX-703.

2 Incidentally, were the policies and procedures that we
3 just looked and the various steps similar to what was in
4 place at Aurora during the time period when you were there?

5 A So based upon what we've seen these appear roughly
6 similar. I don't recall all the specifics of policies and
7 procedures from that long ago.

8 Q Thank you.

9 So TRX-703, those are policies and procedures for the
10 asset risk management department and the master servicing
11 group at Aurora with respect to its repurchase and
12 warranties process, correct?

13 A It's representations and warranties process, yes.

14 Q What did I say? Something else.

15 A I think you said repurchase and warranties, but --

16 Q Thank you for that clarification.

17 Can I direct your attention to the page -- the first
18 page bearing production number 4308? There's a statement
19 at --

20 MS. BRASWELL: Can I just interpose an objection
21 --

22 THE COURT: Yes.

23 MS. BRASWELL: -- just so the record is clear?
24 Same objection, relevance, foundation. This is a 2012
25 Aurora process and procedures document.

1 THE COURT: All right. It's subject to the same
2 caveat as before with respect to the question of
3 applicability to policies that Mr. Trumpp applied.

4 BY MR. SHUSTER:

5 Q Does this document resemble documents -- the policies
6 and procedures documents that were in place at Aurora during
7 the time period when you were there?

8 A I haven't had a chance to go through this and read it
9 word for word. It looks similar in content.

10 Q Thank you, sir. The Section 1.0 on page 4308,
11 Mr. Trumpp, states in the second sentence:

12 "That if adverse findings are discovered the
13 claims specialist is responsible for determining if the
14 findings represent a material breach of the reps and
15 warrants."

16 Do you see that?

17 A I do.

18 Q And it goes on to say that, "A material breach occurs
19 when a finding contradicts one of the reps and warranties."
20 Do you see that?

21 A I do.

22 Q And then if I could direct your attention, Mr. Trumpp
23 -- and there's further information on this, is there not,
24 Mr. Trumpp, in Section 3.2?

25 THE COURT: Can I just pause on that sentence? A

1 material breach occurs when a finding contradicts one of the
2 reps and warranties. Is that true?

3 THE WITNESS: That's not necessarily how I would
4 have stated this statement, and I'm not sure why that you
5 used the word contradicts there.

6 THE COURT: A material breach occurs when a
7 finding contradicts one of the reps and warrants. Okay.

8 MR. SHUSTER: There's additional -- I was about to
9 direct the witness to Section 3.2, which has a different
10 formulation of the language.

11 THE COURT: Okay.

12 BY MR. SHUSTER:

13 Q See that there in Section 3.2, Mr. Trumpp?

14 A Yeah, I'm just taking a look at it.

15 THE COURT: Could I ask the two of you to come up
16 for a second?

17 (Sidebar off the record)

18 BY MR. SHUSTER:

19 Q Let me direct your attention, Mr. Trumpp, to
20 Section 4.0 on page 4311.

21 A Okay.

22 Q That refers to the fact that when a breach occurs
23 Aurora Bank must enforce one of the following options, and
24 it says, "A repurchase is an agreement between Aurora and
25 the client whereby the client agrees to buy back the loan at

1 a specified future date and place on an active loan,"

2 correct?

3 A It does.

4 Q And it goes on to say, "This option is exercised for
5 claims on active loans," correct?

6 A Yes.

7 Q And then it makes a distinction and says:

8 "A make whole is an agreement between the client

9 and Aurora Bank where the client acknowledges

10 obligation to indemnify Aurora Bank or the trust for a

11 loss incurred on a liquidated loan."

12 Do you see that?

13 A I do.

14 Q And it goes on to say, "This option is exercised for
15 claims on loans that have been liquidated at a loss,"

16 correct?

17 A Yes.

18 Q And in some of the demand letters that we've looked at
19 and certainly that you've seen, some of these demand letters
20 are denoted make whole requests and others are not, correct?

21 A Yes.

22 Q Just quickly then going through a couple other points
23 in here. On page 4313 there's a reference to the fact that
24 the claims specialist creates a demand letter which is to --
25 used to communicate loans which have been identified that

1 breached the applicable reps and warranties language,
2 correct?

3 A Yes.

4 Q And then the form of the letter is set forth in
5 excerpted format on page 4314.

6 A Yes, I see that.

7 Q And then on page 4319 in Section 8.0, rebuttal of
8 claim, it states that the client is entitled to dispute a
9 claim in their supporting documentation that refutes the
10 findings. Do you see that?

11 A I do.

12 Q And that's similar to the language that's in the --
13 some of the demand letters that we've looked at, correct?

14 A Meaning that we gave the sellers an opportunity to
15 refute our findings? Yes.

16 Q Okay. Thank you, Mr. Trumpp. Thank you, and I'm done
17 with that exhibit, but not the big thank you. It's coming.

18 A I figured.

19 (Laughter)

20 Q Okay.

21 THE COURT: Let us know when you're up for a
22 break, Mr. Shuster.

23 MR. SHUSTER: Would love a break, so any time.
24 Now would be great.

25 THE COURT: Okay. Why don't we take ten minutes,

1 and we'll move on to the next topic. All right?

2 (Recessed at 3:32 p.m.; reconvened at 3:52 p.m.)

3 THE COURT: Please have a seat.

4 BY MR. SHUSTER:

5 Q Mr. Trumpp, on the subject of servicing notes -- I
6 should say further to the subject of servicing notes I'm
7 going to direct your attention to TRX-2737, please.

8 A Okay. I'm getting a workout today.

9 Q So what I would like to -- oh, sorry.

10 THE COURT: It's in -- of the volumes that I have
11 it's in Volume III.

12 (Pause)

13 THE COURT: Mr. Shuster, are we going to get to
14 what this is?

15 MR. SHUSTER: Yes.

16 THE COURT: Okay.

17 BY MR. SHUSTER:

18 Q Mr. Trumpp, this is a claim form submitted by the
19 trustees, correct?

20 A It appears that way, yes.

21 Q For the loan number that is partially redacted on the
22 first page of the document, the loan number ending in 3935,
23 correct?

24 A Yes.

25 Q And then if I could direct your attention to the

1 factual basis for defect number 1. In the middle --
2 squarely in the middle of that breach narrative there's a
3 reference to servicing notes, indicating that the borrower
4 had not received their statement and that the subject
5 property address was the wrong mailing address. You see
6 that?

7 A I do.

8 Q So the servicing notes were part of the evidence that
9 was submitted to support the claim, right?

10 A It appears that way. Yes.

11 Q And the same is true for if you flip to the next page
12 for a factual basis for defect number 2?

13 (Pause)

14 Q And then if I could direct your attention to TRX-2738.
15 Did I get that right, 2738? That is the plan
16 administrator's response.

17 A Okay.

18 Q And you see that in debtor findings number one, the
19 second sentence says, "The evidence is unreliable and
20 insufficient because an inadmissible and uncorroborated
21 insurance certificate and servicing notes do not prove
22 origination income." Do you see that?

23 A I do.

24 Q So the plan administrator was taking the position that
25 the servicing notes were inadmissible, yes?

1 A In this particular instance, yes, of which I haven't
2 seen the servicing notes so I'm not sure I can really
3 comment on what they contained.

4 Q Okay. And the same is said in the response to debtor
5 findings number two, "The evidence is unreliable and
6 insufficient because it relies on inadmissible notes that do
7 not prove the borrower's failure to occupy." Do you see
8 that?

9 A I'm looking for that right now. Sorry. Okay. Yeah. I
10 see that.

11 Q So it -- above it says the evidence is -- the servicing
12 notes are inadmissible and uncorroborated and here they're
13 saying they are unreliable and insufficient, correct?

14 A Yes.

15 Q Mr. Trumpp, let me just turn quickly to the subject of
16 purchase price. On the loans that the plan administrator
17 accepted as breaching, materially breaching, the plan
18 administrator did not challenge the trustee's purchase price
19 calculations, correct?

20 A No.

21 Q That's not correct?

22 A I recall their being differences in some of our
23 purchase prices, so we didn't always agree with the purchase
24 price submitted. I believe there were deductions that were
25 made sometimes for things that came out of our review of the

1 law certifications and the corporate expense logs and our
2 purchase price review. So it didn't always match. And
3 there were additional clarification of information included
4 in our approval reports back that discussed the reservation
5 of rights on behalf of Lehman for those purchase prices.

6 Q The -- but the plan administrator had an expert -- you
7 said that you needed some of the on hold loan documents, the
8 documents that cause you to put loans on hold because you
9 had to look at whether servicers were negligent and slow in
10 foreclosing or the servicer charges were too much and so
11 forth, right?

12 A That was part of our review, yes.

13 Q Okay. And you calculated a number for that on the
14 accepted loans, the aggregate purchase price on the accepted
15 loans is about \$265 million and you calculated a number
16 going to the issues you've described, the \$4.2 million,
17 right?

18 A Those numbers sound in line. Yes.

19 Q And then you withdrew that objection to the aggregate
20 purchase price on those loans?

21 A We ultimately did, but that doesn't mean it wasn't part
22 of our process.

23 Q I would like to -- let me ask you about the collapsed
24 trusts that you testified to. You testified that the
25 significance of these transactions is that an independent

1 third party assessed the particular claims and merits of
2 where they thought it was going, right?

3 A I --

4 Q I'm quoting from --

5 A I'll take that that's the quote of what I said.

6 Q Are you aware that the appraiser specifically
7 disclaimed conducting any independent analysis of the
8 particular claims and merits of the claims in these trusts?

9 THE COURT: Yes, Mr. Cosenza.

10 MR. COSENZA: What -- I don't know what the basis
11 is for Mr. Shuster's statement. There's no foundation.
12 He's testifying about something. I don't know what facts
13 he's discussing. There's no foundation at all as to what
14 the appraiser is, where he's getting this evidence from.
15 You know, I -- it's just all based on the -- he can take the
16 -- go into the box and testify if he wants to testify, but I
17 don't know what the basis is for -- and the foundation is
18 for this question.

19 MR. SHUSTER: The witness testified that he has
20 knowledge of this. I have a good faith basis for asking
21 these questions.

22 THE COURT: Well --

23 MR. SHUSTER: He testified. He --

24 THE COURT: Come --

25 MR. SHUSTER: -- characterized --

1 THE COURT: Come --

2 MR. SHUSTER: -- the appraiser --

3 THE COURT: Come on up. Come on up.

4 (At sidebar off the record.)

5 BY MR. SHUSTER:

6 Q Have you seen the appraisals for the collapsed trusts?

7 A For some of them, yes.

8 Q So are you aware that they have language in them that
9 specifically disclaims conducting any independent analysis
10 of the particular claims and merits of the claims in the
11 trusts?

12 A Yes.

13 Q Are you also aware the appraiser stated that it could
14 not evaluate the merits of the proposed settlement amount as
15 some materials were not made available given the private
16 nature of the transactions?

17 A I'm not sure I recall that particular piece.

18 Q Do you know that the trustees have no authority under
19 the trusts agreements to object to the sale?

20 THE COURT: Mr. Cosenza.

21 MR. COSENZA: Yeah. Yeah. This is calling for a
22 legal conclusion on --

23 THE COURT: If he --

24 MR. COSENZA: Yeah, if he knows.

25 THE COURT: It's just whether or not he knows.

1 MR. COSENZA: Sure.

2 THE WITNESS: I don't know.

3 BY MR. SHUSTER:

4 Q You know that the trustee -- do you know that they have
5 no authority to object to the sale price?

6 A And when you say sale price you're -- I think you're
7 referring to the sale price of the claim and not the loans?
8 I -- I have not researched this in the agreements myself. I
9 don't know.

10 Q Let's have a look at your binder of yesterday, Mr.
11 Trump, your direct binder.

12 (Pause)

13 Q Do you have it, sir?

14 A Yes.

15 Q This is your white binder from yesterday.

16 A Okay.

17 Q Thank you.

18 Okay. You -- I want to focus on P8 -- your exemplar
19 loan 123258824.

20 THE COURT: PA what, Mr. Shuster?

21 MR. SHUSTER: The loan number is 123258824. It's
22 at Tab PA-689 which is the claims package.

23 (Pause)

24 BY MR. SHUSTER:

25 Q Now there were three claims on that loan, one of which

1 you focused on which was a misrepresentation of income
2 claim, correct, sir?

3 A Yes.

4 Q This was the borrower who identified himself as a
5 driver on his loan application and who submitted a hardship
6 letter that was painful to read about experiencing colon
7 cancer. Do you remember that?

8 A I'm sorry. Hold on a second.

9 (Pause)

10 A Yes. I do remember that.

11 Q So the claim package contains the -- I guess the claim
12 package is at Tab 663 and it contains the loan application.
13 And the loan application is at -- starts at -- well, starts
14 at the page Law deb ending in 18. Well, it's exhibit --
15 it's page 7 of 24 of the exhibit. That's the easier way to
16 find it. You with me?

17 A Yes, I am.

18 Q And on the next page the borrower identifies his type
19 of work as driver?

20 A Yes.

21 Q And then he gives an income number of \$6,500, correct,
22 monthly?

23 A Yes.

24 Q I thought you testified, Mr. Trumpp, that the borrower
25 didn't sign this loan application; that it was taken over

1 the phone?

2 MS. BRASSWELL: Objection. Mischaracterizes.

3 THE WITNESS: I don't --

4 THE COURT: Hold on. Do you recall?

5 THE WITNESS: I don't recall saying anything about
6 whether it was signed or not.

7 MR. SHUSTER: Okay.

8 THE WITNESS: I do recall saying that it was taken
9 over the phone and that's referenced on page 10 of 24 in the
10 lower left-hand corner.

11 MR. SHUSTER: Oh, I see. So it was taken over the
12 phone, but you weren't suggesting that it wasn't signed.

13 THE WITNESS: That's correct.

14 BY MR. SHUSTER:

15 Q And it was signed, right, the next page, strongly
16 suggest, page 11, the signature is redacted out and there's
17 a handwritten date, right?

18 A There's -- in my copy there is a signature of the
19 borrow -- or the borrower interviewer, but there is not a
20 signature of the borrower. So I don't know if that's
21 because it was redacted out or not or how that worked.

22 Q Well, on page 11 -- are you looking at page 11 now?

23 A No. I'm looking at page 10.

24 Q Right. So if you look at page 11.

25 A Okay.

1 Q You see there's a signature -- a handwritten date and
2 it looks like there was a signature for the borrower, but it
3 was -- it's redacted out. Do you see that now?

4 A That I do so.

5 Q Okay. Now you remember you looked at the borrower's
6 2007 W-2 and that it shows a total income of 31,945? Do you
7 remember that from your direct testimony?

8 A I remember it being \$31,000 and something.

9 Q Right. So that's at page --

10 A Yeah. Yes. I see that.

11 Q -- that's at -- yeah. That's at page 20 of 24. And
12 you testified that the borrower only worked for the first
13 five months of the year, correct?

14 A I think I testified that we weren't sure how many
15 months he worked in the year, but it wasn't -- we inferred
16 from the information in the file that he worked the first
17 five months of the year.

18 Q So -- but there -- and you pointed to a disability form
19 which is at PA-666.

20 A That was one of the medical records that we referred
21 to,. Yes.

22 Q Yes. Page -- I'm looking at page 5 of 14 in the
23 plaintiff's -- PA's Exhibit 666.

24 A Yes.

25 Q And that shows that this was an '07 loan, right, so

1 that shows that the disability did not commence until
2 December of 2007, December 20. Do you see that? That's
3 reflected in two places, the first at the top is the
4 physician's disability statement and on line one, first date
5 of disability, first date of disability 12/20/07. Do you
6 see that?

7 A Yes.

8 Q And then it -- there's a Section C employer's
9 disability statement, right? And that shows also that the
10 first date of disability was 12/20/07. Do you see that,
11 sir?

12 A I do.

13 Q And it says in line 3 that prior to this disability the
14 borrower worked what appears to be a full schedule of 40 to
15 60 hours a week.

16 A So I do see where it says that he was working 40 to 60
17 hours. I also see down at the end of line 7 where it talks
18 about he depends on short-term disability. So I'm not sure
19 how that factors in here. And the reference that we used
20 for the fact that we thought his medical condition may have
21 started in May was listed on page 3.

22 Q Yeah. No. No. That was an admissions form. But this
23 is -- this is different information that says that his
24 disability commenced in December of that year and that prior
25 to that time he worked 40 to 60 hours a week, right?

1 A That's what the form says.

2 Q Okay. And the income number that the trustees put
3 forward is -- was \$31,945, right?

4 A That's correct.

5 Q Which is also reflected on that form, correct?

6 A It is.

7 Q And you testified, I think, that you looked at all the
8 information in the loan file, but we went back to the loan
9 file and we found some other information. And so that is in
10 Exhibits TRX-2728, 2729 and 2730, which we'll hand up to you
11 now.

12 (Pause)

13 THE WITNESS: Okay.

14 BY MR. SHUSTER:

15 Q So 2728 is a W-2 for the next calendar year, '08,
16 correct?

17 A Yes.

18 Q And it shows income very much in range with the income
19 number that the trustees put forward, correct?

20 A Based upon this W-2 for an annual year of 2008 I see a
21 similar number, but we don't know how many hours or jobs
22 that this particular person may have worked in 2008,
23 especially with his health condition.

24 Q And then if you look in 2009 you -- sorry -- TRX-2730
25 you see an adjusted gross income number of 39,659. It's a

1 record of account from the IRS for the -- for that tax
2 period ending with that calendar year, right?

3 A Yes.

4 Q And then 2729, TRX-2729 is income information for 2010
5 which again shows income, a W-2 that shows income from the
6 same employer as in '07 and '08 and '09 in the same range,
7 39,888.10.

8 A Yes. And as we talked about yesterday this guy had
9 multiple modification requests throughout these years. So
10 we don't necessarily know what was going on in his life for
11 these additional years.

12 Q Well --

13 A All we can glean is what we saw in those hardship
14 letters.

15 Q -- Mr. Trumpp, you put this loan forward yesterday, a
16 handpicked loan to show that -- how careful you were in your
17 review and how sloppy the trustees were in theirs. Why
18 didn't you provide these three pieces of corroborating
19 information which were in the loan file that the trustees
20 provided to you?

21 MS. BRASSWELL: Objection to Mr. Shuster's
22 characterization.

23 THE WITNESS: So I think we were trying to show
24 yesterday where based upon the information in the claim
25 package and the loan file -- I'm sorry.

1 THE COURT: Answer the question. Let's stick to
2 the facts. It's not embed argument in the facts or the
3 questions. All right.

4 Okay. So the question is during yesterday's
5 testimony, if you know, why did you not present the pieces
6 of paper that Mr. Shuster has now showed you today with
7 respect to the subsequent year evidence of income by this
8 borrower?

9 THE WITNESS: So yesterday what we were trying to
10 show is based upon the evidence that we were finding in the
11 loan file it was really hard to decipher what the borrower
12 was making at the time of origination and when he filled out
13 this application. And it was really hard to know what was
14 in his mind as to what he was anticipating making prior to
15 coming down with colon cancer, and what was going on in the
16 general market of employment at that particular time.

17 So we don't necessarily know what he thought he was
18 going to make, what he actually made in that particular
19 month when he signed this. Based upon these W-2s we can see
20 that over those years he made less, but we also know that he
21 submitted several requests for hardship letters, received
22 modifications. We don't know what was going on in this
23 borrower's life.

24 The question is what was he making and what did he
25 believe he was going to be making at the time he filled out

1 that application.

2 BY MR. SHUSTER:

3 Q It is a fact, though, is it not, sir, that the
4 corroborating evidence from 2008, 2009, 2010 that's in the
5 loan file does strongly tend to suggest that the income
6 number put forward by the trustees for 2007 was correct and
7 well within the range?

8 A I think it begs the question that you may have to look
9 deeper to see what really happened at origination on this
10 loan.

11 Q Mr. Trumpp, let me turn to one of your other exemplars.

12 (Pause)

13 Q Let me look at one of your other exemplars. This brief
14 description is contained in plan administrator 692. And the
15 trustees refer to a bankruptcy filing, statement of
16 financial affairs. Do you remember this one of the borrower
17 and co-borrower?

18 A Yes.

19 Q So if you look at the loan application which is in plan
20 administrator 667, page 5, you see that the borrower lists
21 \$7,250 in base employment income.

22 A I'm sorry. I'm getting there.

23 Q I'm sorry.

24 (Pause)

25 A I'm sorry. Can you repeat the question?

1 Q If you look at page 5 of the exhibit that's where the
2 borrower and co-borrower set forth their monthly income,
3 correct?

4 A Yes.

5 Q And the borrower lists her -- I think it's a her,
6 income at 7,250, right?

7 A Yes.

8 Q Doesn't list any other income for herself, correct?

9 A Correct.

10 Q And the co-borrower puts down a number of six -- 6,800
11 for monthly income, correct?

12 A Yes.

13 Q Now if we turn to page 50 of the exhibit and hold onto
14 that page 5 in case you -- if you would in case you need to
15 refer back to it. But if we refer to page 50 of the
16 exhibit, Mr. Trumpp, you pointed out yesterday that there is
17 some business income that's identified for the wife that is
18 set forth there, right?

19 A Yes.

20 Q But even if you do the math and you add up the wife's
21 wages and her business income you come to roughly \$59,000,
22 right?

23 A Yes.

24 Q Which works out to just under 5,000 a month?

25 A Yes.

1 Q And the income number that she reflects on the loan
2 application is \$7,250 a month, correct?

3 A For a loan that closed in April of '07 so we don't --
4 again, don't know what happened for the remainder of '07.
5 But your math is fair.

6 Q It looks like what happened for the remainder of '07 is
7 that she picked up some other business income, but -- which
8 she hadn't identified on the loan application, but that even
9 with that additional business income added to her wages she
10 fell well short on a monthly basis of the income number that
11 was set forth in the loan application, correct?

12 A Can you repeat that question, please?

13 Q I don't think so. I'll read it to you. It looks like
14 what happened for the remainder of 2007 is that she picked
15 up some other business income which she hadn't identified on
16 the loan application, but even with that additional business
17 income added to her wages she felt well short on a monthly
18 basis of the income number that was set forth in the loan
19 application.

20 MS. BRASSWELL: Objection.

21 BY MR. SHUSTER:

22 Q Isn't that right?

23 MS. BRASSWELL: Calls for speculation.

24 THE COURT: Well, the question does call for
25 speculation. Your question is it looks like. So the

1 question should be does the witness know.

2 MR. SHUSTER: I'm --

3 THE COURT: I mean, I --

4 MR. SHUSTER: I'm certainly happy to adopt that
5 question.

6 THE WITNESS: I have no idea if she picked it up.
7 She did list business income in the years of 2007, 2008 and
8 2009, and I would also note that this application was also
9 taken over the phone so we don't know what she told --

10 MR. SHUSTER: Okay.

11 THE WITNESS: -- the other side.

12 BY MR. SHUSTER:

13 Q It's reasonable to assume if she had business income
14 she would have identified it, correct, on her loan
15 application?

16 MS. BRASSWELL: Objection. Calls for speculation.

17 THE WITNESS: I don't know.

18 MR. SHUSTER: Okay.

19 BY MR. SHUSTER:

20 Q And it is the case -- I know you've answered this but
21 I'm not sure you have, so even the combined number with the
22 additional income that you pointed out still falls well
23 short of the monthly number that is identified on the loan
24 application, right?

25 A Assuming average payments dividing by 12 it is less.

1 Yes.

2 Q Mr. Trumpp, you testified that you provided Bates
3 numbers to the trustees citing to documents and to
4 supplement the plan administrator's formal responses on
5 breach claims, correct?

6 A Yes.

7 Q The Bates numbers that the plan administrator provided
8 were at the loan level rather than the individual breach
9 level, correct?

10 A Yes.

11 Q So just to be clear about that, if the three different
12 breaches were identified for a loan the trust -- the plan
13 administrator didn't identify Bates -- by Bates numbers
14 evidence going to one breach and then the other and then the
15 other. It just gave Bates numbers going to the loan,
16 correct?

17 A Yes. Yes.

18 Q And the plan administrator provided no additional
19 guidance. For example, it didn't provide any narrative
20 describing how the Bates numbers bore upon the breach claims
21 or the plan administrator's response to the breach claims,
22 right?

23 A We did not.

24 Q The plan administrator had such notes, didn't it?

25 A The plan administrator maintained their own notes on

1 the loans. Yes.

2 Q And to this day the plan administrator has not provided
3 narrative descriptions that accompany the Bates numbers that
4 would explain how the Bates referenced documents bear upon
5 or refute the evidence tendered by the trustees?

6 A So as we talked about yesterday we gave the formal
7 responses, the Bates citations and the loan files back. Did
8 we add additional narrative outside of the formal responses,
9 no.

10 Q Let's take a peek at the formal responses for a second
11 then. The -- let's look at your Exhibit PA-620 which you
12 put forward yesterday. And I'm looking at the seventh page
13 into the exhibit and I don't know a way, another way to
14 identify this.

15 (Pause)

16 A Does it look like this?

17 Q It does look like that. That's not going to do much
18 for our eyesight, but here we go.

19 So you have a response there that the evidence is un --
20 sorry. Looking at the first line which is -- the first
21 line, the content which is line 68. Are you with me?

22 A I believe so.

23 Q It's -- so the -- you say the evidence does not support
24 a breach. Then you say the, evidence is unreliable and
25 insufficient because income stated in non-origination tax

1 returns does not prove origination income, right?

2 A Yes.

3 Q You don't provide any narrative for why -- narrative
4 explanation there or ever for why the specific tax return
5 information that was provided on that loan by the trustees
6 fails to establish that there was an income breach, correct?

7 A I -- I think our formal response on that speaks for
8 itself. We -- if you're asking was there more narrative for
9 that particular loan that we provided, no.

10 Q You had it. You didn't provide it?

11 A As I think I stated a couple of questions again we
12 maintained additional records and notes and information on
13 our side. That doesn't necessarily mean that that was
14 something that was called for to be provided under the
15 protocol.

16 Q Duff & Phelps asked for that information, didn't they?

17 A They did.

18 Q And you told them you couldn't provide it because the
19 lawyer said you couldn't provide it?

20 A I don't remember necessarily those exact words.

21 Q But something --

22 A Ultimately it was determined that that was not
23 something that we should turn over.

24 Q But in substance was that your response to their
25 request?

1 A Ultimately it was a decision made with the advice of
2 counsel.

3 Q You testified yesterday that you -- and I -- in
4 discussing your formal responses that:

5 "This was intended to be the formal response that
6 gave the basis for our rejection of the claim. We
7 gave that information back, but we didn't
8 necessarily list every single piece of evidence or
9 every single defense that we were going to assert on
10 that particular loan because we knew that
11 potentially could come up in step four or step
12 five."

13 Do you remember saying that?

14 A Yes.

15 Q So was the plan administrator holding back information
16 because it anticipated mediation or litigation?

17 A No.

18 Q Other than the advice of counsel, which I don't want
19 you to disclose, can you tell me why the plan administrator
20 didn't provide its counter-narratives that more granularly
21 address the evidence, if they do, that the trustees put
22 forward?

23 MR. COSENZA: Your Honor --

24 THE COURT: Mr. Cosenza.

25 MR. COSENZA: -- I have to object. I would like to

1 have a sidebar on this --

2 THE COURT: Yeah.

3 MR. COSENZA: -- quickly.

4 THE COURT: We're going to take a break. Maybe a
5 couple of you could join me in the conference room.

6 (Recessed at 4:36 p.m.; reconvened at 4:59 p.m.)

7 THE COURT: All right. Thanks, everyone, for your
8 patience. I think Mr. Shuster is going to be in a position
9 to finish up here.

10 MR. SHUSTER: Yes. So I've got to reorient myself
11 here.

12 (Pause)

13 BY MR. SHUSTER:

14 Q So on the Bates numbers, Mr. Trump, I want to walk you
15 through, if I could, a couple of your Bates references,
16 responses on a couple of loans. So let's start with, it's
17 for Loan 33382979, let's start with our claims submission
18 which is TRX-2749.

19 (Pause)

20 A Which book am I supposed to be looking in?

21 THE COURT: You are in the binder III of III, I
22 believe, Mr. Trump.

23 (Pause)

24 BY MR. SHUSTER:

25 Q So, Mr. Trump, you see the trustees' claim submission

1 there, TRX-2749?

2 A Okay.

3 Q So there is a statement that the borrower said that he
4 earned nearly \$8,000 a month. Post-closing same year tax
5 returns show income of about half that. And then the plan
6 administrator responded at TRX-2750 and stated that the
7 evidence is unreliable and insufficient because income
8 stated in origination year tax return does not prove
9 origination income. Do you see that?

10 A I do.

11 Q And then the plan administrator provided, eventually
12 provided Bates stamped -- Bates references, correct, for
13 this loan?

14 A Yeah. We gave the entire loan file back Bates stamped
15 and references to particular documents.

16 Q Okay. So let me -- we have a demonstrative that
17 reflects the Bates references for this document, for this
18 loan. It's TRDX-1, which is I think a screenshot from
19 Exhibit D to the plan administrator's August 2015 letter
20 providing Bates number.

21 MR. SHUSTER: May we approach to hand it up?

22 THE COURT: Yes. Thank you. Thanks.

23 BY MR. SHUSTER:

24 Q So those are the Bates references that the plan
25 administrator provided for this loan, correct? You can see

1 that the loan numbers match.

2 A Based upon the last four digits, yes.

3 Q So you got a starting Bates range reference, an ending
4 Bates range reference and a Bates page reference. So the
5 starting reference for the first one is a single page
6 reference. It's 43726. The ending Bates reference is
7 43726, and you cite to a Bates page which is 43726, right?

8 A Yes.

9 Q The next one is a range 4 -- 7486 to 8796. You don't
10 provide a specific Bates page reference, correct?

11 A That is correct.

12 Q And the third one again is just a single page that you
13 list each time.

14 A Okay.

15 Q So in the first line and in the third line you list the
16 same single page Bates reference each time and on the second
17 line you identify a range of Bates number, but you don't
18 identify a page range, correct?

19 A Yes.

20 Q So then if we look at TRX -- the first Bates range is
21 43726 and that is TRX-2772. And that is a citation to the
22 cover page of what document, Mr. Trumpp?

23 A It is part of the product profile for Aurora's Alte
24 (ph) first lien products.

25 Q So can you look at that and determine how that, citing

1 to that page bears upon or illuminates the plan
2 administrator's formal response to the breach claim?

3 A I would need to spend more time looking at the loan
4 file and all of the other additional information to confirm
5 that I know the intent in how this was used. This is a loan
6 that I don't recall seeing before.

7 Q Can you look at the second one? So the second one is -
8 - the Bates range is LBHIT and numbers ending 7486 to 96
9 which is TRX-2773.

10 (Pause)

11 Q So there you appear to be citing back to us the loan
12 application and the tax return evidence that we cited to
13 you. Do you see that?

14 A Yes.

15 Q How does that bear upon or illuminate the plan
16 administrator's formal response?

17 A As I just said I would need additional information to
18 make sure I understood how it was intended to be used. I
19 would have had to look at the claim packages submitted by
20 the trustees. I would have had to review the loan file,
21 presumably the things that the trustees did when they were
22 making this claim to make sure I fully understood the
23 attributes and everything that was going into it to better
24 understand how best to respond using this information.

25 Q And then the third one is Document LBHIT 138449537

1 which is TRX-2774. And that's the origination, the loan
2 origination credit report, correct?

3 A I can't definitively say it's the origination credit
4 report. It looks like a credit report pulled around the
5 time of origination.

6 Q So now looking at these three documents which you cited
7 back to the trustees, does any of this provide new
8 information that wasn't in the loan file or breach package
9 that tends to refute the breach finding evidence that the
10 trustees put forward?

11 A As I've stated the last couple of questions related to
12 these documents, I would need to understand both claim
13 package and the loan file which presumably the trustees had
14 done when they were making these claims and our reviewers
15 had done when we were responding. I can't take this
16 information right here and give you a complete answer.

17 Q So what were the trustees meant to do with this
18 information, a citation to the first page of the loan
19 program description, a citation to the origination credit
20 report, and a citation to the loan application and the tax
21 return that the trustees provided to the plan administrator,
22 how were they supposed to figure out what you were saying?

23 A So I think I have said the trustees presumably were
24 intimately familiar with the facts and circumstances around
25 this particular loan file when they made the claim. And

1 that would be in their foundation of knowledge as they were
2 interpreting these documents and these responses to their
3 claims from the plan administrator.

4 I clearly didn't have that body of information in my
5 head as you're asking these questions. So I would have to
6 spend some additional time looking at this particular claim,
7 deciphering what they said, looking at the documents and
8 coming up with an answer for you.

9 Q Did you have -- if the trust -- if the plan
10 administrator had any evidence that tended to refute the tax
11 return evidence that the trustees had put forward would it
12 have been the plan administrator's practice to provide --
13 cite to and provide that evidence?

14 A So the plan administrator's process was to review the
15 claims as submitted by the trustees, weigh the evidence,
16 occasionally poll third party sources for evidence and
17 provide that information back. In this particular case I
18 don't necessarily know all of the additional things that
19 were done and provided back to the trustees.

20 Q If the plan administrator, though, had evidence that
21 refuted the information that was set forth in the same year
22 tax returns that the trustees had provided, would the plan
23 administrator have provided that evidence or provided Bates
24 citations to that evidence?

25 A So I think our formal response goes to our rational for

1 rejecting this particular claim and sets forth the positions
2 of the plan administrator.

3 Q Just -- just to be clear if you had other evidence
4 would you have provided it, other evidence would you have
5 provided it?

6 A I know there are other instances in other loans where
7 we provided additional evidence. I don't -- as I sit here
8 today I don't know what fully transpired on this loan in our
9 particular review.

10 Q Thanks. Hold on just a sec if you would.

11 (Pause)

12 MR. SHUSTER: I think we're going to leave it at
13 that, Mr. Trumpp. So subject to doing any recross tomorrow
14 --

15 THE COURT: Okay.

16 MR. SHUSTER: -- I'm going to stop there. And
17 thanks very much.

18 THE COURT: Okay. All right. Very good.

19 So, Ms. Brasswell, did you -- you wanted to start
20 redirect in the morning, yes?

21 MS. BRASSWELL: I would like to do that. Yes, Your
22 Honor.

23 THE COURT: Okay. All right. So we'll just keep
24 all the binders, I guess. Okay. And no one is coming in
25 before you folks come back in the morning, so you can leave

1 everything out and about. 10:00 start, and we'll have to
2 conclude tomorrow no later than five. All right.

3 MR. SHUSTER: Thank you, Your Honor.

4 MS. BRASSWELL: Thank you, Your Honor.

5 THE COURT: Very good. Thank you.

6 MR. COSENZA: All right. Thank you, Your Honor.

7 THE COURT: Have a pleasant evening --

8 MR. COSENZA: Have a good evening.

9 THE COURT: -- everyone.

10 (Whereupon, these proceedings concluded at 5:14 p.m.)

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We, Dawn South and Sherri L. Breach certify that the
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Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501